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Attorneys for Charging Party, INTERNATIONAL UNION OF PAINTERS & ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 28

INTERNATIONAL UNION OF PAINTERS & ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO, Charging Party, and CAESARS ENTERTAINMENT D/B/A RIO ALL-SUITES HOTEL AND CASINO, Respondent.	Case 28-CA-060841 **MOTION TO CORRECT OR REJECT POSITION OF GENERAL COUNSEL**

The Board issued its Decision in this case on August 27, 2015. The case is now pending in the Ninth Circuit, based upon Petitions for Review and a Petition for Enforcement.

This issue is presented to the Board because the General Counsel has filed the attached motion in the Ninth Circuit. *See* Exhibit A. It asks the Ninth Circuit to remand this case because the General Counsel asserts that the *Boeing Co.* case, 365 NLRB No. 154 (Dec. 14, 2017), is

retroactive and applies to this case as a "pending case." We dispute that for reasons that are addressed in the attached response filed in the Ninth Circuit. *See* Exhibit B.

We recognize that there is an attorney-client privilege between the Board and its General Counsel. We submit, however, that the Board will have to issue some public order to insure that this request to remand is actually an order or ruling of the Board, not the decision of the General Counsel without authority of the Board.

There are three reasons for this. First, Member Emanuel should have recused himself because his firm, Littler Mendelson, represented the parent companies and/or this employer in various matters. There is a pending motion to require that he recuse himself in another case involving virtually the same rules and the same employer. *See Verizon Wireless*, Case 02-CA-157403, *et al*. Third, the Charging Party in this case has filed a motion for reconsideration in *Boeing Co*. Part of that motion challenges Member Emanuel's participation in the *Boeing Co.* case and this case.

Because Member Emanuel should not have participated in either *Boeing Co.* or the decision in this case whether to seek remand, that leaves only three members of the Board to consult with its counsel regarding the course of action to take in the case pending in the Ninth Circuit.

We understand from published reports that the same issue has been raised with respect to Member Emanuel's participation in the decision to seek remand from the D.C. Circuit in *Browning-Ferris Industries of California, Inc.*, 362 NLRB No. 186 (Aug. 27, 2015).

Second, the issue raised by the General Counsel is the retroactivity of *Boeing Co.*, 365 NLRB No. 154. That case was a three to two decision. Assuming there are three members of the Board, two of those members dissented. The one remaining member who did participate, Member Kaplan, was in the majority. This leaves a serious question as to whether, if there are three members of the Board, the majority of the Board authorized the General Counsel to take a position from which they dissented.

Assuming, however, that Member Emanuel did not properly recuse himself, that leaves a four member Board. Two members dissented in that case and two members did not. Thus, there may well have been a deadlock on that issue.

We believe that this matter needs to be brought to the Board's attention to determine whether the General Counsel, in filing the attached motion, acted in excess of his authority or without the approval of the Board. We have doubts whether the Board authorized the filing of this motion, and if the Board did not authorize it, it should make a public order to that effect. If it authorized the filing of the motion, it should so indicate. Otherwise, the General Counsel should be directed to withdraw the motion.

Dated: February 15, 2018

Respectfully submitted,

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

/s/ David A. Rosenfeld
By: DAVID A. ROSENFELD
CAREN P. SENCER

Attorneys for Charging Party, INTERNATIONAL UNION OF PAINTERS & ALLIED TRADES, DISTRICT COUNCIL 15, Local 159,AFL-CIO

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EXHIBIT A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,	)	
Petitioner	)	**No. 17-71353**
and	)	
	)	
INTERNATIONAL UNION OF PAINTERS & ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO,	)	
Intervenor	)	
v.	)	
	)	
CAESARS ENTERTAINMENT, d/b/a RIO ALL-SUITES HOTEL & CASINO,	)	
Respondent	)	
	)	
INTERNATIONAL UNION OF PAINTERS & ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO,	)	
Petitioner	)	**No. 17-73379**
v.	)	
	)	
NATIONAL LABOR RELATIONS BOARD,	)	
Respondent	)	

MOTION OF THE NATIONAL LABOR RELATIONS BOARD
FOR PARTIAL REMAND AND PARTIAL SUMMARY ENFORCEMENT

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit,

The National Labor Relations Board ("the Board"), by its Deputy Associate General Counsel, respectfully moves the Court to enter an order remanding to the Board certain issues in this consolidated application for enforcement and petition for review, and summarily enforcing the remaining portion of the Board's Order.

Specifically, the Board seeks remand of seven findings regarding workplace rules for reconsideration in light of an intervening change to Board law in *Boeing Co.*, 365 NLRB No. 154 (Dec. 14, 2017), which eliminated the rationale underlying those seven findings. The Board also seeks summary enforcement of the portion of its Order remedying one uncontested finding regarding a rule that is unaffected by the change in law. In support of this motion, the Board shows as follows:

I. PROCEDURAL HISTORY

On August 27, 2015, the Board issued its Decision and Order in *Caesars Entertainment d/b/a Rio All-Suites Hotel & Casino*, Case No. 28-CA-060841, reported at 362 NLRB No. 190. [Exh. A.] The Board found that four employee-handbook rules maintained by Caesars Entertainment d/b/a Rio All-Suites Hotel & Casino ("the Company") violate Section 8(a)(1) of the National Labor Relations Act ("the Act"), 29 U.S.C. § 158(a)(1), and that four additional handbook rules are not unlawful. 362 NLRB No. 190, slip op. at 1-7.[1] The Board's Order directs the Company to remedy the unfair labor practices found by immediately rescinding the unlawful handbook rules, by furnishing employees with handbook inserts stating that the unlawful rules have been rescinded or by providing lawfully worded rules

[1] The Board also severed and remanded to an administrative law judge allegations regarding two other policies—which are not at issue in the present case—for further consideration in a separate proceeding. *Id.* slip op. at 5, 7.

on adhesive backing to attach to the existing handbooks, and by posting a remedial notice. *Id.* slip op. at 6-7.

On May 11, 2017, the Board filed an application for enforcement of its Order against the Company, which was docketed as 9th Cir. Case No. 17-71353. On December 19, 2017, the charging party before the Board in the present case, International Union of Painters & Allied Trades, District Council 15, Local 159 ("the Union"), filed a petition for review of the unfair-labor-practice allegations dismissed by the Board, which was docketed as 9th Cir. Case No. 17-73379. While an unopposed motion to consolidate the two cases was pending, the Company filed its opening brief on January 2, 2018. The Court consolidated the cases on January 9. The petitioner-intervenor Union's opening brief is due March 9, and the Board's consolidated answering brief is due April 9.

II. LEGAL BACKGROUND

Section 8(a)(1) of the Act, 29 U.S.C. § 158(a)(1), makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in [Section 7]."[2] Under established Board law, a workplace rule that explicitly restricts Section 7 activities violates Section 8(a)(1). *Lutheran Heritage Vill.-Livonia*, 343 NLRB 646, 647 (2004); *accord Guardsmark*,

[2] Section 7 guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ." 29 U.S.C. § 157.

LLC v. NLRB, 475 F.3d 369, 374 (D.C. Cir. 2007). But even a rule that does not explicitly restrict Section 7 rights—a "facially neutral" rule—may be unlawful. In *Lutheran Heritage*, the Board articulated a three-prong test for assessing whether a facially neutral rule violates Section 8(a)(1). 343 NLRB at 647. As relevant here, the Board determined that it would find a violation under the first prong of this test if employees would "reasonably construe" a rule's language as prohibiting activities protected by Section 7. *Id.*[3]

Prior to any briefing before the Court in the present proceeding, the Board issued its decision in *Boeing Co.*, 365 NLRB No. 154, 2017 WL 6403495 (Dec. 14, 2017). In *Boeing*, the Board "overrule[d] the *Lutheran Heritage* 'reasonably construe' standard" and announced a new test to replace it. *Boeing*, 2017 WL 6403495, at *2. Under the Board's new standard, "when evaluating a facially neutral policy, rule or handbook provision that, when reasonably interpreted, would potentially interfere with the exercise of [Section 7] rights, the Board will evaluate two things: (i) the nature and extent of the potential impact on [those] rights, and (ii) legitimate justifications associated with the rule." *Id.* at *4. In addition, the Board found it "appropriate to apply the standard . . . retroactively [to *Boeing*] and to all other pending cases." *Id.* at *18.

[3] Under the second and third prongs, which are not at issue in this case, a facially neutral rule is unlawful if it "was promulgated in response to union activity," or if it "has been applied to restrict the exercise of Section 7 rights." *Id.*

III. THE BOARD SEEKS REMAND OF ITS FINDINGS AS TO THE SEVEN FACIALLY NEUTRAL RULES AT ISSUE

In light of the intervening change to Board law in *Boeing*, the rationale underlying the Board's findings as to the seven facially neutral rules at issue in this case has been eliminated, and those findings should be remanded to the Board for reconsideration. Specifically, the Board's findings that three facially neutral rules violate the Act, and that four facially neutral rules do not violate the Act, were based on the *Lutheran Heritage* "reasonably construe" standard. 362 NLRB No. 190, slip op. at 1-5 & nn.3-6.[4] *Boeing* overruled that standard and adopted a new framework. Whether those seven rules are lawful or unlawful under *Boeing* is a question for the Board in the first instance. Therefore, the Board no longer seeks enforcement of the portions of its Order addressing those findings, and respectfully moves to remand the relevant portions of this case to the Board for reconsideration.

[4] The Board found that employees would reasonably construe three rules as restricting protected activities: (i) a rule prohibiting the disclosure of "salary structures" or "policy and procedures manuals," *id.* slip op. at 2-3; (ii) a no-camera rule prohibiting workplace photography, *id.* slip op. at 3-5; and (iii) a no-recording rule prohibiting audio or visual recording devices, *id.* The Board found that employees would *not* reasonably construe four rules as restricting protected activities: (i) an off-duty employee attire rule, *id.* slip op. at 1 nn.3-4; (ii) an off-duty access rule, *id.* slip op. at 1-2 n.4; (iii) a use-of-facility rule, *id.*; and (iv) a rule against the disclosure of "confidential company information," *id.* slip op. at 3 n.6.

IV. THE BOARD IS ENTITLED TO SUMMARY ENFORCEMENT AS TO ONE UNCONTESTED UNFAIR-LABOR-PRACTICE FINDING UNAFFECTED BY *BOEING*

In addition to the seven facially neutral rules discussed above, the Company maintains a rule which states: "Employees who walk off the job during shift will be considered to have abandoned their job and voluntarily separated their employment." *Id.* slip op at 13. The administrative law judge found that the rule against walking off the job is "devoid of ambiguity" and constitutes an "explicit restriction" on employees' statutory right to engage in protected strikes or work stoppages. *Id.* slip op. at 13-14; *see NLRB v. Robertson Indus.*, 560 F.2d 396, 398 (9th Cir. 1976) ("It is well settled that employees have the right to engage in concerted activities . . . [including] the right to walk off the job in protest against intolerable working conditions or excessive work demands."). The Company filed no exceptions with the Board so as to appeal that finding by the administrative law judge, and, accordingly, the Board affirmed. 362 NLRB No. 190, slip op. at 1 & n.3, 6-7.

The Board is entitled to summary enforcement as to this unfair labor practice because the Company failed to contest that the rule is unlawful before the Board or the Court. *NLRB v. Legacy Health Sys.*, 662 F.3d 1124, 1126-27 (9th Cir. 2011). The Company filed no exceptions to the administrative law judge's finding that the rule is unlawful, 362 NLRB No. 190, slip op. at 1 n.3, and thus Section 10(e) of the

Act deprives the Court of jurisdiction to entertain any objections to that finding. 29 U.S.C. § 160(e) ("No objection that has not been urged before the Board . . . shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances."); *Legacy Health*, 662 F.3d at 1126-27; *NLRB v. STR, Inc.*, 549 F.2d 641, 642 (9th Cir. 1977). Furthermore, in its opening brief to the Court, the Company has admittedly "not addressed" the uncontested violation or its failure to file exceptions before the Board (Company Br. 2 n.1), and thus the Company has waived any objection to the finding that the rule in question violates the Act. *Sparks Nugget, Inc. v. NLRB*, 968 F.2d 991, 998 (9th Cir. 1992); *see, e.g.*, *City of Emeryville v. Robinson*, 621 F.3d 1251, 1262 n.10 (9th Cir. 2010) (noting that issues are deemed waived in absence of supporting arguments in party's opening brief).

Unlike the rules described in Section III, above, this portion of the Board's Order is unaffected by the change in law in *Boeing*, because it involves a handbook rule that expressly restricts Section 7 rights.[5] *Cf. Boeing*, 2017 WL 6403495, at *1 & n.4, *8-*17. Accordingly, the Company's unlawful rule must be rescinded.

[5] Contrary to the Company's passing assertion—which is unsupported by any developed argumentation—the uncontested violation is not called "into question" by *Boeing*. (Company Br. 2-3 n.2.) The Board's holding in *Boeing* solely concerns handbook rules that are "facially neutral." 2017 WL 6403495, at *1 & n.4, *8-*17. In this case, the administrative law judge did not apply the overruled portion of *Lutheran Heritage* in finding the non-facially-neutral rule in question to

CONCLUSION

For the foregoing reasons, the Board respectfully requests that the Court grant the Board's motion by entering an order remanding seven of eight handbook rules for reconsideration by the Board in light of *Boeing*, and by summarily enforcing the uncontested portion of the Board's Order as to the remaining rule against walking off the job.

Counsel for the Board contacted counsels for the Company and the Union on February 8, 2018, to obtain their positions on this motion. The Company opposes the motion in part. The Board was unable to obtain the position of the Union prior to the filing of this motion.

Respectfully submitted,

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 9th day of February, 2018

be unlawful, 362 NLRB No. 190, slip op. at 13-14, and the Company failed to contest that finding or the legal analysis applied by the judge, *id.* slip op. at 1 n.3.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,	)	
Petitioner	)	**No. 17-71353**
and	)	
INTERNATIONAL UNION OF PAINTERS &	)	
ALLIED TRADES, DISTRICT COUNCIL 15,	)	
LOCAL 159, AFL-CIO, **Intervenor**	)	
v.	)	
CAESARS ENTERTAINMENT, d/b/a	)	
RIO ALL-SUITES HOTEL & CASINO,	)	
Respondent	)	
	)	
INTERNATIONAL UNION OF PAINTERS &	)	
ALLIED TRADES, DISTRICT COUNCIL 15,	)	
LOCAL 159, AFL-CIO, **Petitioner**	)	**No. 17-73379**
v.	)	
NATIONAL LABOR RELATIONS BOARD,	)	
Respondent	)	

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 2091 words of proportionally-spaced, 14-point type, and that the word processing system used was Microsoft Word 2010.

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street S.E.
Washington, D.C. 20570
(202) 273-2960

Dated at Washington, D.C.
this 9th day of February, 2018

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,	)	
Petitioner	)	**No. 17-71353**
and	)	
INTERNATIONAL UNION OF PAINTERS &	)	
ALLIED TRADES, DISTRICT COUNCIL 15,	)	
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CAESARS ENTERTAINMENT, d/b/a	)	
RIO ALL-SUITES HOTEL & CASINO,	)	
Respondent	)	
	)	
INTERNATIONAL UNION OF PAINTERS &	)	
ALLIED TRADES, DISTRICT COUNCIL 15,	)	
LOCAL 159, AFL-CIO, **Petitioner**	)	**No. 17-73379**
v.	)	
NATIONAL LABOR RELATIONS BOARD,	)	
Respondent	)	

CERTIFICATE OF SERVICE

I certify that on February 9, 2018, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. I certify that the foregoing motion was served on all parties or their counsel of record through the CM/ECF system.

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street S.E.
Washington, D.C. 20570
(202) 273-2960

Dated at Washington, D.C.
this 9th day of February, 2018

Exhibit A

Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino *and* International Union of Painters and Allied Trades, District Council 15, Local 159, AFL–CIO. Case 28–CA–060841

August 27, 2015

DECISION AND ORDER REMANDING IN PART

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON AND MCFERRAN

On March 20, 2012, Administrative Law Judge William L. Schmidt issued the attached decision. The General Counsel and the Charging Party Union each filed exceptions and supporting briefs, the Respondent filed answering briefs, and the General Counsel filed a reply brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order Remanding in Part, and to adopt the judge's recommended Order as modified and set forth in full below.[2]

Facts

The Respondent, a Las Vegas casino and hotel, is owned and operated by Caesar's Entertainment, Inc. The Respondent maintains an 84-page employee handbook ("The Rio Employee Handbook") which it distributes to its workforce of approximately 3000 employees, about 1700 of whom are union-represented. All employees must sign a form acknowledging receipt of the handbook and their responsibility to comply with its provisions. The handbook advises employees that noncompliance with its provisions may result in discipline, including discharge. At issue here are nine handbook rules, the maintenance of which is alleged to violate Section 8(a)(1) of the Act.[3]

Legal Framework

An employer violates Section 8(a)(1) of the Act if it maintains workplace rules that would reasonably tend to chill employees in the exercise of their Section 7 rights. See *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). The analytical framework for assessing whether maintenance of rules violates the Act is set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). Under *Lutheran Heritage*, a work rule is unlawful if "the rule *explicitly* restricts activities protected by Section 7." Id. at 646 (emphasis in original). If the work rule does not explicitly restrict protected activities, it nonetheless will violate Section 8(a)(1) if "(1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights." Id. at 647.

The rules at issue here are not alleged to explicitly restrict protected activities or to have been promulgated in response to or applied to restrict Section 7 activities. Thus, the relevant inquiry is whether employees would reasonably construe the challenged rules to prohibit Section 7 activity, under the first prong of the *Lutheran Heritage* test. In construing rules, *Lutheran Heritage* teaches that they are to be given a reasonable reading, and are not to be considered in isolation. Id. at 646. Further, any ambiguity in the rule must be construed against the drafter—here, the Respondent. *Lafayette Park*, supra at 825.

Discussion

We find, in agreement with the judge, that maintenance of four of the challenged handbook rules does not violate Section 8(a)(1) of the Act.[4] For the reasons dis-

[1] Pursuant to *Reliant Energy*, 339 NLRB 66 (2003), the Union filed four post-brief letters.

[2] We shall modify the judge's recommended Order to conform to our findings and to the Board's standard remedial language. We shall substitute a new notice to conform to the Order as modified, and in accordance with our decision in *Durham School Services*, 360 NLRB No. 85 (2014).

[3] No exceptions were filed to the judge's finding that the Respondent's maintenance of a 10th rule, conduct standard No. 28, handbook, p. 2.20, violates Sec. 8(a)(1).

The panel unanimously finds the off-duty employee attire rule lawful. Chairman Pearce and Member McFerran form the majority with respect to the confidentiality rule (handbook, p. 2.21); the rules banning the use of cameras, camera phones, audio-visual and other recording equipment; and the rules banning some computer usage. Members Johnson and McFerran form the majority with respect to the recreational use rules (conduct standard No. 9 and the "Use of Facility" provision) and the "confidential company information" rule (conduct standard No. 10).

[4] For the following reasons, we agree with the judge that the Respondent did not violate Sec. 8(a)(1) by maintaining a handbook rule titled "Visiting Property When Not in Uniform" (handbook, p. 2.7). The contested provision ("clothing which displays profanity, vulgarity of any kind, . . . or offensive words or pictures") follows language in the same paragraph requiring employees to wear "neat and presentable" clothing, to wear "shirts, shoes or strapped sandals and name tag/badge if on property for work-related reasons or back of house services (e.g. HR, Payroll)," and not to wear such items as "bathing suits, short shorts, thong-type sandals, tube tops, halter tops, tank tops, thin straps, strapless clothing, midriff tops." Further, the record shows that employees frequently wear clothing at the facility that bears a union message. Viewing the rule in its context, employees would not reasonably conclude that Sec. 7 activity, including wearing messages or images about terms and conditions of employment, is encompassed by the rule.

cussed below, however, we reverse the judge and find that three other challenged rules are unlawful. Finally, we remand two rules for further consideration.

1. Rules prohibiting the disclosure of confidential information

In disagreement with the judge and our dissenting colleague, we find that the confidentiality rule on p. 2.21 of the handbook is unlawful. That rule provides:

> **Confidentiality**: All employees are prohibited from disclosing to anyone outside the Company, indirectly or directly, any information about the Company which has not been shared by the Company with the general public. This type of disclosure includes participation in internet chat rooms or message boards. Exceptions to the rule include disclosures which are authorized by the Company or required or authorized by the law. This information includes, but is not limited to:
>
> - Company financial data
> - Plans and strategies (development, marketing, business)
> - Organizational charts, salary structures, policy and procedures manuals
> - Research or analyses
> - Customer or supplier lists or related information.
>
> The property or Corporate Law department should be consulted whenever there is a question about whether the information is considered confidential. Any failure to uphold this policy should be communicated to the Law department and may result in immediate Separation of Employment. All managerial, supervisory, and selected positions are required to comply with the "Use and Disclosure of Confidential Information" policy.

The challenged Confidentiality rule is extraordinarily broad in scope, prohibiting employees from sharing "any information about the Company which has not been shared by the Company with the general public." Without more, this sweeping provision clearly implicates terms and conditions of employment that the Board has found to be protected by Section 7. See, e.g., *Flamingo Hilton-Laughlin*, 330 NLRB 287, 291–292 (1999). The rule then goes on to list illustrations of prohibited disclosures that go to the very core of protected concerted activity, leaving employees to reasonably conclude that this rule prohibits their Section 7 activity. For example, the rule lists "salary structures" among the confidential information that cannot be disclosed without the Respondent's consent. The Board has held, however, that bans on employees disclosing wages clearly violate Section 8(a)(1). See *MCPc, Inc.*, 360 NLRB No. 39, slip op. at 1 (2014) (finding unlawful a rule prohibiting "dissemination of confidential information within [the company], such as personal or financial information, etc."); *Double Eagle Hotel & Casino*, 341 NLRB 112, 115 (2004) (finding unlawful rules banning discussion of terms and conditions of employment, including "disciplinary information, grievance/complaint information, performance evaluations, salary information, salary grade, types of pay increases, and termination date of employees" and discussion of "confidential or sensitive information concerning the [c]ompany or any or its employees"), enfd. as modified 414 F.3d 1249 (10th Cir. 2005), cert. denied 546 U.S. 1170 (2006). Likewise, the Board has found that rules prohibiting employee disclosure of the employer's manuals, including the employee handbook, are overbroad, as employees would reasonably understand them to encompass disclosure of employees' terms and conditions of employment, thereby infringing on employees' exercise of their Section 7 rights. *Quicken Loans*, 361 NLRB No. 94 (2014), reaffirming as modified and incorporating 359 NLRB No. 141 (2013) (rule

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In finding the "Visiting Property When Not in Uniform" rule to be lawful, Chairman Pearce does not rely on extrinsic evidence that employees wear clothing bearing a union message at the facility.

We also agree with the judge that the Respondent's conduct standard No. 9 (handbook, p. 2.19) and "Use of Facility" provision (handbook, p. 2.34) do not violate Sec. 8(a)(1) under either *Lutheran Heritage* or *Tri-County Medical Center*, 222 NLRB 1089 (1976). As the judge found, these rules clearly speak to off-duty employees' *recreational use* of the Respondent's facilities as *guests*, extolling them to visit during "non-peak business hours," to gamble responsibly, and to consume alcohol "responsibly while having a meal." Thus, we find that employees would not reasonably read these rules to restrict their access to the Respondent's facilities to exercise their Sec. 7 rights.

Contrary to the judge and his colleagues, Chairman Pearce would find that the Respondent's conduct standard No. 9 and "Use of Facility" provision are unlawful. Both rules require off-duty employees to secure supervisory or managerial approval before they visit the Respondent's "property," "public areas," "public facilities" or "facilities," thus giving the Respondent broad, unfettered discretion to interpret the rule to deny access to those engaged in protected activities. By this requirement, these rules do not comport with the third prong of *Tri-County Medical Center*, supra, requiring access rules to be uniformly applied. See *Saint John's Health Center*, 357 NLRB No. 170, slip op. at 5 (2011) ("In effect, the Respondent is telling its employees, you may not enter the premises after your shift except when we say you can. Such a rule is not consistent with *Tri-County*."). See also *San Pablo Lytton Casino*, 361 NLRB No. 148, slip op. at 4 (2014). Moreover, the prior-approval requirement also runs afoul of *Lutheran-Heritage*, supra, as "employees would reasonably construe the broad managerial-approval exception as requiring them to disclose their intent to engage in protected activity when seeking such approval, a compelled disclosure that would certainly tend to chill the exercise of Sec. 7 rights." *San Pablo Lytton Casino*, supra, slip op. at 4 fn. 6.

Finally, for the reasons discussed later in this Decision, we find conduct standard No. 10 (handbook, p. 2.19) does not violate Sec. 8(a)(1). As also discussed later in this Decision, Chairman Pearce does not agree with this finding.

unlawfully overbroad that defined nondisclosable "nonpublic information" to include "all personnel lists, rosters," and "handbooks"). Yet, the rule expressly covers "policy and procedures manuals."

Contrary to the judge and our dissenting colleague, we do not find that *Mediaone of Greater Florida*, 340 NLRB 277 (2003), warrants a contrary result. The *Mediaone* rule found lawful prohibited disclosure of "customer and employee information, including organizational charts and databases," but did so only in the context of a lengthy litany of particularized information under the heading of "Proprietary Information." That particularized information included business plans, technological research and development, product documentation, marketing plans and pricing information, copyrighted works, trade secrets, financial information, patents, copyrights, trademarks, service marks, trade names and goodwill, as well as organizational charts. Id. at 278. As the *Mediaone* majority explained, the contested phrase appeared within a "larger provision prohibiting disclosure of 'proprietary information, including *information assets* and *intellectual property*' and [was] listed as an example of 'intellectual property'"; thus, employees would not likely understand that employee terms and conditions of employment were covered by the ban on disclosing proprietary information. Id. at 279 (original emphasis). Here, the rule's relationship to the Respondent's legitimate business concerns, is far less clear and, as discussed above, references to salary structures and policy manuals encompass information that employees have a protected right to disclose. See, e.g., *Flex Frac Logistics, LLC v. NLRB*, 746 F.3d 205, 210 (5th Cir. 2014) (distinguishing *Mediaone* in enforcing Board order and finding that "personnel information and documents" is within "larger category of 'confidential information'" rather than a "sub-set of 'intellectual property'"); *Fresh & Easy Neighborhood Market*, 361 NLRB No. 8, slip op. at 2-3 (2014) (distinguishing *Mediaone* in finding unlawful rule requiring employees to "Keep customer and employee information secure. Information must be used fairly, lawfully and only for the purpose for which it was obtained.").[5]

Accordingly, we reverse the judge and find that language contained in the confidentiality rule, p. 2.21, violates Section 8(a)(1).[6]

2. Rules banning use of cameras, camera phones, audio-visual and other recording equipment

Relying on *Flagstaff Medical Center*, 357 NLRB No. 65 (2011), review granted in part and enfd. in part 715 F.3d 928 (D.C. Cir. 2013), the judge found that the handbook's restrictions on employee recordings in conduct standards nos. 24 and 35 were lawful, and dismissed the related 8(a)(1) allegations. Those rules require as follows:

> Conduct standard No. 24, p. 2.20, (emphasis added):
>
> Personal pagers, beepers and cell phones worn by employees must not be visible or audible to guests and should not impact job performance. The use of personal cellular/digital phones is prohibited while on duty, but is allowed during break time in designated break areas. *Camera phones may not be used to take photos on property without permission from a Director or above.*
>
> Conduct standard No. 35, p. 2.21 (emphasis added):

[5] In Member McFerran's view, the Board's decision in *Mediaone* is in tension with the mainstream of Board precedent in this area and properly should be limited to the particular facts presented in that case.

[6] The General Counsel also contends that the Respondent's conduct standard No. 10 (handbook, p. 2.19) is unlawful. That rule provides, "Employees will not reveal confidential company information to unauthorized persons." We disagree and find this rule analogous to the rule found lawful in *Lafayette Park*, supra, 326 NLRB at 826 (prohibiting "[d]ivulging Hotel-private information to employees or other individuals or entities that are not authorized to receive that information") Further, to the extent that the confidentiality rule found unlawful above influenced employees' interpretation of conduct standard No. 10, our standard remedies for the unlawful confidentiality rule, which include ordering its rescission, will eliminate that concern.

Chairman Pearce would find the broadly worded conduct standard No. 10 unlawful. See, e.g. *Lily Transportation Corp.*, 362 NLRB No. 54, slip op. at 1 fn. 3 (2015) (and cited cases). He disagrees with the judge and his colleagues that this rule is akin to one found lawful in *Lafayette Park*, supra at 826. Unlike *Lafayette Park*, where the rule was limited to one specific type of information which employees would reasonably understand to relate to their employer's legitimate interest in the security of its proprietary information, conduct standard No. 10's generalized reference to undefined confidential information carries no similar restriction or connotation. As an ambiguous term, it must be construed against the Respondent as drafter. See *Hyundai America Shipping Agency*, 357 NLRB No. 80, slip op. at 12 (2011); *Lafayette Park*, supra at 828 (citing *Norris/O'Bannon*, 307 NLRB 1236, 1245 (1992)). Thus, whether it is read individually or in conjunction with the confidentiality rule on page 2.21 of the handbook, conduct standard No. 10 is overbroad.

Unlike his colleagues, Member Johnson believes that the confidentiality rule on page 2.21 of the handbook is lawful. In *Mediaone*, the Board concluded "that employees, reading the rule as a whole, would reasonably understand that it was designed to protect the confidentiality of the [r]espondent's proprietary business information rather than to prohibit discussion of employee wages." Id. at 279. The Respondent's rule here includes examples of undisputedly confidential company information that are the same or nearly the same as the "particularized" examples in *Mediaone*, a case which he views as correctly decided and that is still good law. Both sets of examples provide sufficient context for employees to understand that prohibited disclosures are limited to proprietary information and would not reasonably be understood as extending to discussion of employee wages or other terms and conditions of employment. Member Johnson finds the other cases relied on by the majority to be meaningfully distinguishable in terms of context from the rule in this case. See *Fresh & Easy Neighborhood Market*, 361 NLRB No. 8, slip op. at 4–6 (Member Johnson, dissenting).

Cameras, any type of audio visual recording equipment and/or recording devices may not be used unless specifically authorized for business purposes (e.g. events).

Contrary to the judge and our dissenting colleague, we find these provisions are unlawfully overbroad.[7] Employee photographing and videotaping is protected by Section 7 when employees are acting in concert for their mutual aid and protection and no overriding employer interest is present. Such protected conduct may include, for example, employees recording images of employee picketing, documenting unsafe workplace equipment or hazardous working conditions,[8] documenting and publicizing discussions about terms and conditions of employment, or documenting inconsistent application of employer rules. See *Hyundai America Shipping Agency*, supra, 357 NLRB No. 80, slip op. at 1, 12 (finding unlawful maintaining rule prohibiting employees from disclosing "information or messages" from the employer's email, instant messaging, phone and other computer systems except to "authorized persons," which would reasonably be understood to include discussions about terms and conditions of employment); *White Oak Manor*, 353 NLRB 795, 795 fn. 2, 798–799 (2009) (finding that photography was part of the *res gestae* of employee's protected concerted activity in documenting inconsistent enforcement of employer dress code), reaffirmed and incorporated by reference at 355 NLRB No. 211 (2010), enfd. 452 Fed.Appx. 374 (4th Cir. 2011); *Sullivan, Long & Hagerty*, 303 NLRB 1007, 1013 (1991) (finding employee's use of tape recorder in workplace to aid federal government investigation to be protected), enfd. mem. 976 F.2d 743 (11th Cir. 1992).

Further, the Respondent tied neither prohibition at issue here to any particularized interest, such as the privacy of its patrons. As our dissenting colleague observes, the Respondent does have a guest privacy provision as part of its confidentiality rules.[9] That provision admonishes employees not to share "privileged information" about guests' gaming habits and to respect celebrities' privacy. The Respondent, however, failed to link this or any other interest to the prohibitions at issue here. As a result, employees would not reasonably interpret these rules as related to the protection of patron privacy. Without such a limiting principle, the Respondent's employees are left to draw the reasonable conclusion that these two prohibitions would prohibit their use of audio-visual devices in furtherance of their protected concerted activities.[10]

Contrary to the judge and our dissenting colleague, we find *Flagstaff* distinguishable. In *Flagstaff*, the Board majority found lawful a medical center's rule prohibiting employee use of electronic equipment during work time and the "[t]he use of cameras for recording images of patients and/or hospital equipment, property, or facilities." 357 NLRB No. 65, slip op. at 4–5. Emphasizing the "weighty" privacy interest of hospital patients and of hospitals in preventing the wrongful disclosure of individually identifiable health information, the Board majority concluded that "[e]mployees would reasonably interpret [the employer's] rule as a legitimate means of protecting the privacy of patients and their hospital surroundings, not as a prohibition of protected activity." Id., slip op. at 5. Unlike the rule in *Flagstaff*, which expressly referenced "recording images of patients," the rules presented here include no indication that they are designed to protect privacy or other legitimate interests.[11]

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[7] As the General Counsel notes, the judge's statement that employees would not read the "ban as being designed to chill their Section 7 activities" is an imprecise statement of the *Lafayette Park* standard because whether the Respondent drafted the language with the intent to chill employees' protected activities is immaterial; the analysis focuses on whether employees would reasonably read the rule as written as a limit on such activities.

[8] It is settled that "expression of concerns about safety and [well-being] of . . . employees" in the work place constitutes protected activity. *Martin Marietta Corp*., 293 NLRB 719, 725 (1989) (citing *NLRB v. Washington Aluminum Co*., 370 U.S. 9 (1962)). And employees are protected in publicizing their workplace concerns and discussing them with other employees and with union representatives. See *Kinder-Care Learning Centers*, 299 NLRB 1171, 1171–1172 (1990).

[9] That provision states (handbook, p. 2.21):

> Guest Privacy: Employees are prohibited from violating guest/employee privacy by disclosing privileged information. This privileged information includes but is not limited to a guest's level of play, frequency of visitation, buy-in amounts, win/loss results or any other record of their play or personal information. This information must not be shared with anyone other than the guest or a co-worker who clearly has a business reason for needing to know. This prohibits disclosing information to the guest's family members, friends, or business associates—anyone other than the guest.
>
> As our Company expands both nationally and internationally and sponsor[s] events such as the WSOP and celebrity golf outings, a chance encounter with an employee's favorite actors, sports idols, or other public figures is possible and can leave quite an impression. While it is exciting to see celebrities visiting our properties, we must be sure to maintain the highest level of professionalism and discretion. It is essential that employees respect a celebrity's right to privacy and discretion.

[10] Of course, the fact that these prohibitions are subject to discretionary exemptions by the Respondent does not make them any less unlawful. See, e.g., *American Cast Iron Pipe Co.*, 234 NLRB 1126, 1131 (1978) (finding unlawful rule requiring employees to obtain permission before distributing union information in nonwork areas on nonworking time), enfd. 600 F.2d 132 (8th Cir. 1979).

Because the Respondent does not invoke security concerns as justification for these rules, we see no need to address our dissenting colleague's speculation about how the Board might decide future cases involving such concerns.

[11] Chairman Pearce adheres to his dissent in *Flagstaff*, but finds that case distinguishable here because the *Flagstaff* medical-care-provider

Based on the foregoing, we find that the Respondent's employees would reasonably interpret these rules to infringe on their protected concerted activity. Thus, these rules violate Section 8(a)(1).[12]

3. Rules banning some computer usage

Finally, we will remand allegations involving rules banning computer usage for further consideration. The judge found that the Respondent's work rules entitled "Use of Company Systems, Equipment, and Resources" are lawful under the Board's decision in *Register Guard*, 351 NLRB 1110 (2007), enfd. in relevant part and remanded sub nom. *Guard Publishing v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009).[13] Subsequent to the judge's decision, the Board overruled *Register Guard* in relevant part in *Purple Communications, Inc.*, 361 NLRB No. 126 (2014), and articulated a new analytic framework for determining the lawfulness of employer rules restricting employee use of a company's email system. The Board held in *Purple Communications*:

> we will presume that employees who have rightful access to their employer's email system in the course of their work have a right to use the email system to engage in Section 7-protected communications on nonworking time. An employer may rebut the presumption by demonstrating that special circumstances necessary to maintain production or discipline justify restricting its employees' rights.

Id., slip op. at 14. The Board applied its holding retroactively, and remanded the case to allow for the introduction of evidence under the new test. Id., slip op. at 16–17. Accordingly, we will sever and remand the allegation concerning the Respondent's rules entitled "Use of Company Systems, Equipment, and Resources" to the administrative law judge for further proceedings consistent with *Purple Communications*, including allowing the parties to introduce evidence relevant to a determination of the lawfulness of those rules.[14]

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employer had a strong interest in protecting patient privacy, an interest not present here. Casinos and hotels may have an interest in protecting customer privacy, but that privacy interest does not trump the employees' Sec. 7 rights. Accordingly, in this non-patient care setting, an employer must tailor its workplace rules to not interfere with Sec. 7 rights.

[12] Given our finding above, we need not engage in a debate about the relative weight of privacy interests for hotel or gaming patrons.

Unlike his colleagues, Member Johnson finds both rules lawful. He observes that there is no Sec. 7 right to *possession* of a camera or other recording device by employees on an employer's property, nor is there an inherent right to use a camera or other recording device in the course of Sec. 7 activity. Thus, the question is whether employees would reasonably view the rule in dispute as implicitly including and interfering with Sec. 7 activities. Answering that question, the Board majority in *Flagstaff* properly found that the hospital's rule was not unlawfully overbroad. 357 NLRB No. 65, slip op. at 4–5. As in that case, the Respondent's employees would certainly understand its weighty interests in protecting guest privacy and in protecting both the Respondent and guests from illegal or unfair gambling activities. And as in *Flagstaff*, these interests are expressly and contextually tied to the rules at issue here. The guest privacy rule (handbook, p. 2.21) quoted by my colleagues and the abundance of security cameras and other precautions undoubtedly impress upon employees the importance of these interests. Contrary to his colleagues, Member Johnson would not require an express tie-in of the camera-related rules to the privacy rule and Respondent's security interests, as he finds the connection obvious from the factual context. *Knowing the obvious reasons for these rules*, the Respondent's employees would similarly and reasonably interpret them as legitimate means of safeguarding guest privacy and the integrity of the Respondent's gaming operations, not as prohibitions of protected activity.

[13] The computer confidentiality rule, p. 2.14, states in relevant part (emphasis added):

> *Do not disclose or distribute outside of [Rio's] any information that is marked or considered confidential or proprietary unless you have received a signed non-disclosure agreement through the Law Department.* In some cases, such as with Trade Secrets, distribution within the Company should be limited and controlled (e.g., numbered copies and a record of who has received the information). You are responsible for contacting your department manager or the Law Department for instructions.

The general restrictions section on computer usage, p. 2.14, provides (emphasis added):

Computer resources may not be used to:

- Commit, aid or abet in the commission of a crime
- Violate local, state or federal laws
- Violate copyright and trade secret laws
- *Share confidential information with the general public, including discussing the company, its financial results or prospects, or the performance or value of company stock by using an internet message board to post any message, in whole or in part, or by engaging in an internet or online chatroom*
- *Convey or display anything fraudulent, pornographic, abusive, profane, offensive, libelous or slanderous*
- *Send chain letters or other forms of non-business information*
- Seek employment opportunities outside of the Company
- Invade the privacy of or harass other people
- *Solicit for personal gain or advancement of personal views*
- *Violate rules or policies of the Company*

Do not visit inappropriate (non-business) websites, including but not limited to online auctions, day trading, retail/wholesale, chat rooms, message boards and journals. Limit the use of personal email, including using streaming media (e.g., video and audio clips) and downloading photos.

[14] Although Chairman Pearce agrees with the General Counsel that, even under the prior *Register Guard* decision, the Respondent's rules restricting computer usage were unlawfully overbroad to the extent that they prohibited the disclosure of "any information that is marked or considered confidential" and banned employee solicitation for "advancement of personal views," he agrees that the rules should be remanded to the judge in the first instance to consider under *Purple Communications*.

For the reasons set forth in his dissent in *Purple Communications*, Member Johnson disagrees with remanding the allegations concerning the computer usage rules to the judge for further proceedings and anal-

AMENDED CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By the following acts and conduct the Respondent has violated Section 8(a)(1) of the Act.

(a) Maintaining the provision in its Rio Employee Handbook headed "Confidentiality," p. 2.21, that contains the following language: "All employees are prohibited from disclosing to anyone outside of the Company, indirectly or directly, any information about the Company which has not been shared by the Company with the general public [including] . . . . Organizational charts, salary structures, policy and procedure manuals."

(b) Maintaining the provision in its Rio Employee Handbook headed "Conduct Standard No. 24," p. 2.20, that contains the following language: "Camera phones may not be used to take photos on property without permission from a Director or above."

(c) Maintaining the provision in its Rio Employee Handbook headed "Conduct Standard No. 35," p. 2.21, that contains the following language: "Cameras, any type of audio visual recording equipment and/or recording devices may not be used unless specifically authorized for business purposes (e.g. events)."

(d) Maintaining the provision in its Rio Employee Handbook headed "Conduct Standard No. 28," p. 2.20, that contains the following language: "Employees who walk off the job during shift will be considered to have abandoned their job and voluntarily separated their employment."

3. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, the Respondent is ordered to cease and desist and to take certain affirmative action designed to effectuate the Act. Having found that the Respondent maintains unlawful handbook rules, including confidentiality rules, camera and audio-visual equipment use rules, and a restriction about walking off the job, the Respondent is required to revise or rescind the unlawful rules. This is the standard remedy to assure that employees may engage in protected activity without fear of being subjected to an unlawful rule. See *Guardsmark, LLC*, 344 NLRB 809, 812 (2005), enfd. in relevant part 475 F.3d 369 (D.C. Cir. 2007). As stated there, the Respondent may comply with our order of rescission by reprinting the Rio Employee Handbook without the unlawful language or, in order to save the expense of reprinting the whole handbook, it may supply its employees with handbook inserts stating that the unlawful rules have been rescinded or with lawfully worded rules on adhesive backing that will correct or cover the unlawfully broad rules, until it republishes the handbook without the unlawful provisions. Any copies of the handbook that include the unlawful rules must include the inserts before being distributed to employees. Id. at 812 fn. 8. See also *Hills & Dales General Hospital*, 360 NLRB No. 70, slip op. at 3 (2014).[15]

ORDER

The Respondent, Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining the provision in its Rio Employee Handbook headed "Confidentiality," p. 2.21, that contains the following language: "All employees are prohibited from disclosing to anyone outside of the Company, indirectly or directly, any information about the Company which has not been shared by the Company with the general public [including] . . . . Organizational charts, salary structures, policy and procedure manuals."

(b) Maintaining the provision in its Rio Employee Handbook headed "Conduct Standard No. 24," p. 2.20, that contains the following language: "Camera phones may not be used to take photos on property without permission from a Director or above."

(c) Maintaining the provision in its Rio Employee Handbook headed "Conduct Standard No. 35," p. 2.21, that contains the following language: "Cameras, any type of audio visual recording equipment and/or recording devices may not be used unless specifically authorized for business purposes (e.g. events)."

(d) Maintaining the provision in its Rio Employee Handbook headed "Conduct Standard No. 28," p. 2.20, that contains the following language: "Employees who walk off the job during shift will be considered to have abandoned their job and voluntarily separated their employment."

(e) In any like or related manner interfering with, re-

ysis consistent with the majority opinion in that case. He further agrees with the judge's dismissal of the computer usage allegations because the evidence does not establish that employees would reasonably construe the computer usage rules as prohibiting Sec. 7 activity in any case.

[15] The allegations concern the handbook in use at the Rio location. Although the record indicates that the handbook is similar to that in use at other locations of Caesar's Entertainment, formerly known as Harrah's Operating Company, Inc., the record does not make clear whether the unlawful provisions at issue are contained in the handbooks in use at the other sites. Therefore, a nationwide order is not appropriate. Cf. *Guardsmark, LLC v. NLRB*, supra at 381 (nationwide order issued where same provisions in effect at other locations).

straining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the provision in the Rio Employee Handbook headed "Confidentiality," p. 2.21, that contains the following language: "All employees are prohibited from disclosing to anyone outside of the Company, indirectly or directly, any information about the Company which has not been shared by the Company with the general public [including] . . . . Organizational charts, salary structures, policy and procedure manuals."

(b) Rescind the provision in the Rio Employee Handbook headed "Conduct Standard No. 24," p. 2.20, that contains the following language: "Camera phones may not be used to take photos on property without permission from a Director or above."

(c) Rescind the provision in the Rio Employee Handbook headed "Conduct Standard No. 35," p. 2.21, that contains the following language: "Cameras, any type of audio visual recording equipment and/or recording devices may not be used unless specifically authorized for business purposes (e.g. events)."

(d) Rescind the provision in the Rio Employee Handbook headed "Conduct Standard No. 28," p. 2.20, that contains the following language: "Employees who walk off the job during shift will be considered to have abandoned their job and voluntarily separated their employment."

(e) Furnish all current employees at its Las Vegas facility with inserts for its Rio Employee Handbook that (1) advise that the unlawful provisions have been rescinded or (2) provide lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or publish and distribute to employees at its Las Vegas facility revised copies of its Rio Employee Handbook that (1) do not contain the unlawful provisions, or (2) provide lawfully worded provisions.

(f) Within 14 days after service by the Region, post at its Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino facility in Las Vegas, Nevada copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of papers notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any such time since January 5, 2011.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible officer on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

IT IS FURTHER ORDERED that the allegation that the Respondent violated Section 8(a)(1) by maintaining the rules entitled "Use of Company Systems, Equipment, and Resources" is hereby severed and remanded to the Chief Administrative Law Judge for assignment to a judge for further appropriate action as set forth above

IT IS FURTHER ORDERED that the judge to whom the case is assigned shall afford the parties an opportunity to present evidence on the remanded issue and shall prepare a supplemental decision setting forth credibility resolutions, findings of fact, conclusions of law, and a recommended Order. Copies of the supplemental decision shall be served on all parties, after which the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington, D.C. August 27, 2015

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "posted by Order of the National Labor Relations Board" shall read "posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the "National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain the provision in our Rio Employee Handbook headed "Confidentiality," p. 2.21, that contains the following language: "All employees are prohibited from disclosing to anyone outside of the Company, indirectly or directly, any information about the Company which has not been shared by the Company with the general public [including] . . . . Organizational charts, salary structures, policy and procedure manuals."

WE WILL NOT maintain the provision in our Rio Employee Handbook headed "Conduct Standard No. 24," p. 2.20, that contains the following language: "Camera phones may not be used to take photos on property without permission from a Director or above."

WE WILL NOT maintain the provision in our Rio Employee Handbook headed "Conduct Standard No. 35," p. 2.21, that contains the following language: "Cameras, any type of audio visual recording equipment and/or recording devices may not be used unless specifically authorized for business purposes (e.g. events)."

WE WILL NOT maintain the provision in our Rio Employee Handbook headed "Conduct Standard No. 28," p. 2.20, that contains the following language: "Employees who walk off the job during shift will be considered to have abandoned their job and voluntarily separated their employment."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the provision in the Rio Employee Handbook headed "Confidentiality," p. 2.21, that contains the following language: "All employees are prohibited from disclosing to anyone outside of the Company, indirectly or directly, any information about the Company which has not been shared by the Company with the general public [including] . . . . Organizational charts, salary structures, policy and procedure manuals."

WE WILL rescind the provision in the Rio Employee Handbook headed "Conduct Standard No. 24," p. 2.20, that contains the following language: "Camera phones may not be used to take photos on property without permission from a Director or above."

WE WILL rescind the provision in the Rio Employee Handbook headed "Conduct Standard No. 35," p. 2.21, that contains the following language: "Cameras, any type of audio visual recording equipment and/or recording devices may not be used unless specifically authorized for business purposes (e.g. events)."

WE WILL rescind the provision in the Rio Employee Handbook headed "Conduct Standard No. 28," p. 2.20, that contains the following language: "Employees who walk off the job during shift will be considered to have abandoned their job and voluntarily separated their employment."

WE WILL furnish you with inserts for our Rio Employee Handbook that (1) advise that the unlawful provisions have been rescinded or (2) provide lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or WE WILL publish and distribute to you revised copies of our Rio Employee Handbook that (1) do not contain the unlawful provisions, or (2) provide lawfully worded provisions.

CAESAR'S ENTERTAINMENT D/B/A RIO ALL-SUITES HOTEL AND CASINO

The Board's decision can be found at www.nlrb.gov/case/28-CA-060841 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, SE, Washington, D.C. 20570, or by calling (202) 273-1940.

Pablo Godoy and *Larry A. Smith*, for the Acting General Counsel.

John D. McLachlan and *David B. Dornak*, for the Respondent.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. I heard this case at Las Vegas, Nevada, on January 10, 2012. The In-

ternational Union of Painters and Allied Trades, District Council 15, Local 159, AFL–CIO (Charging Party or Local 59) filed the charge on July 5, 2011.[1] On September 30, 2011, the Regional Director for Region 28 of the National Labor Relations Board (NLRB or Board) issued a complaint on behalf of the Acting General Counsel alleging that Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino (Respondent or Company) violated Section 8(a)(1) of the National Labor Relations Act (NLRA or Act) by maintaining certain employee work rules alleged to be overly-broad and discriminatory.[2] Respondent filed a timely answer denying that it engaged in the unfair labor practices alleged.

On the entire record, including my observation of the demeanor of the witnesses, and after carefully considering the briefs filed by the Acting General Counsel and Respondent,[3] I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation engaged in the operation of a hotel and casino at Las Vegas, Nevada, derived gross revenues in excess of $500,000 during 12-month period ending July 5, 2011. During same period, Respondent, in conducting its business operations described above, purchased and received at the its Las Vegas facility goods valued in excess of $50,000 directly from points outside the State of Nevada. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Introduction

The Company is one of 10 properties in Las Vegas, Nevada, owned and operated by Caesar's Entertainment, Inc. (Caesar's). This property employs more than 3000 employees. About 1700 of those employees are covered by the three collective-bargaining agreements between the Company and four separate labor organizations. Neither Local 159 nor any of its affiliated organizations represent any of the Company's workers nor is there any evidence that it currently seeks to represent any workers at this property.

The Acting General Counsel alleges in paragraph 4 of the complaint that Respondent has maintained 10 overly broad work rules that tend to chill employee Section 7 activities. The challenged rules are set forth in the "The Rio Employee Handbook" (the handbook) under the section titled "What the Rio Expects From You." (Jt. Exh. 1, p. 3, et seq.) The Company provides the handbook to each newly hired employee and redistributes it to all employees when revised. The handbook, which appears to be adapted from that in use at Caesar's properties nationwide, was last revised in 2007. None of the unions that currently represent employees have filed a grievance challenging the rules at issue here.

B. General Legal Principles That Govern Workplace Rules Under the NLRA

An employer violates Section 8(a)(1) by maintaining workplace rules that tend to chill Section 7 activities by its employees. *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998). In *Lutheran Heritage Village—Livonia*, 343 NLRB 646 (2004), the Board established an analytical framework for fact finders faced with deciding NLRA cases that challenge the legality of workplace rules. It provides that rules explicitly restricting Section 7 activities violate Section 8(a)(1). But where a rule does not explicitly restrict Section 7 activity, the General Counsel must establish by a preponderance of the evidence that: (1) employees would reasonably construe the rule to prohibit Section 7 activity; (2) the employer adopted the rule in response to union activity; or (3) the employer applied a rule to restrict employee Section 7 activity. Id. at 647. If a rule explicitly infringes the Section 7 rights of employees, the mere maintenance of the rule violates the Act without regard for whether the employer ever applied the rule for that purpose. *Guardsmark v. NLRB*, 475 F.3d 369, 375–376 (D.C. Cir. 2007) In all cases, the Board requires the trial judge to give the rule a reasonable reading, refrain from reading particular phrases in isolation, and avoid improper presumptions about interference with employee rights. 343 NLRB at 646.

The specific rules at issue are described below, with the challenged aspects generally shown in italics. No evidence shows that either the handbook or any specific rule contained in it was adopted in response to a union organizing campaign. Additionally, there is no evidence that the rules have ever been applied to inhibit employee Section 7 activities. Consequently, the analysis provided below centers on whether a challenged rule expressly restricts employee conduct protected by Section 7, and, if not, whether employees would reasonably construe the rule to prohibit Section 7 activity.

C. Relevant Facts and Conclusions

1. The off-duty employee attire rule

Complaint paragraph 4(1) alleges that the handbook rule prohibiting off-duty employees from wearing "clothing which displays profanity, vulgarity of any kind, obscene or offensive words or phrases (sic)." This prohibition applies essentially to off-duty employees who visit Respondent property for a variety of purposes. The rule in its entirety reads:

> **Visiting Property When Not In Uniform:** When on property while off duty for training, New Hire Orientation, meetings, or coming in to change for work, the following Appearances Guidelines apply: All clothing must be neat and presentable. Clothing may not be torn, damaged or defaced in any way. The following items should be worn: shirts, shoes or strapped sandals and name tag/badge if on property for

[1] The name of the International Union has been corrected to reflect its official name.

[2] Sec. 8(a)(1) makes it an unfair labor practice for an employer to "interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 7." The part of Sec. 7 pertinent here guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and . . . to refrain from any or all such activities."

[3] Local 159 joined in the brief filed by the Acting General Counsel.

> work-related reasons or back of house services (e.g., HR, Payroll). *The following may not be worn: bathing suits, short shorts, thong-type sandals, tube tops, halter tops, tank tops, thin straps, strapless clothing, midriff tops, clothing which displays profanity, vulgarity of any kind, obscene or offensive words or pictures.*

The Acting General Counsel implicitly concedes that this rule does not explicitly restrict Section 7 activity. Rather, he claims the words "clothing which displays profanity, vulgarity of any kind, obscene or offensive words or pictures" could reasonably lead an employee to "construe the rule to prohibit them from wearing clothing intended to protest working terms or conditions for fear that Respondent may deem it to be vulgar, profane, or offensive." (AGC Br., p. 7.) Respondent argues that this rule is but one aspect of a six page section of the handbook addressing the image employees present to the hotel guests rather than a prohibition against wearing clothing with a "union message."

I do not agree with the claim that Respondent violated the Act by the mere maintenance of this rule because I am unpersuaded that employees would reasonably construe the rule to prohibit Section 7 activity. This is particularly true where, as here, the evidence shows that employees frequently wear clothing at the facility that bears a union message. The Acting General Counsel's argument, in my judgment, ignores the Board's admonition against reading phrases in isolation and making improper presumptions about interference with employee rights. Fairly read, in the context where it appears, the adjective "offensive" addresses matters of taste a reasonable person would regard as outside the norms of decency common in the community from which Respondent draws its customers rather any of the various forms of activity protected by Section 7. *Adtranz ABB Daimler-Benz Transportation, N.A. Inc. v. NLRB*, 253 F.3d 19, 26 (D.C. Cir. 2001).

The two cases cited by the Acting General Counsel predate *Lutheran Heritage Village*. (AGC Br., p. 8.) One of the cited cases, *University Medical Center*, 335 NLRB 1318 (2001), was denied enforcement in pertinent part by the D.C. Court of Appeals. 335 F.3d 1079 (D.C. Cir. 2003). Given the favorable discussion in the Board's *Lutheran Heritage Village* decision of that circuit's rationale in *Adtranz*, supra, a case similar to *University Medical Center*, I find the continued vitality of the two Board cases cited by the Acting General Counsel very questionable. For these reasons, I recommend dismissal of this allegation.

2. The rules governing the use of facilities by off-duty employees

The allegations in complaint paragraphs 4(2) and 4(3) challenge work rules applicable to the use of Respondent's facilities by off-duty employees. The former is explicitly stated as conduct standard No. 9 and is 1 of 35 enumerated in the employee handbook, under the "Conduct Standards" section. The rule, along with the section's preamble, read:

> **Conduct Standards:** Out of respect for our guests and each other, you are expected to maintain certain behavior and performance standards. The following list provides examples of behavior that can result in disciplinary action; it is not intended to be an exhaustive list. You are expected to use good judgment at all times in behaving appropriately at work.
>
> * * *
>
> *9. With your manager's authorization you may use the Rio public facilities while off duty. When doing so, employees must act professionally and adhere to Conduct Standards (note the above Conduct Standard regarding gambling). In addition, if alcohol is consumed, it should be done responsibly while having a meal. Employees participating in company-sponsored events where alcohol is served (e.g. award banquets) must act responsibly and professionally.*

The other rule in this category challenged by the Acting General Counsel appears several pages ahead of rule 9. It reads as follows:

> **Use of Facility**: Our guests have priority in using our facilities. Employees, however, are welcome to visit the property as a guest during off duty, non-peak business hours. *Visits are permitted with your supervisor's or manager's approval so long as you are not in uniform. With that approval, you may visit public lounges, restaurants, casino and other public areas while off duty. When using any of the facilities as a guest you are restricted to public areas. Even though off duty, you are expected to conduct yourself in a manner consistent with the Conduct of Standards. Please ensure you review Conduct Standards #7 (gambling) and #9 (consuming alcohol) prior to visiting the property.*

The Acting General Counsel argues that these two rules are "facially invalid" because they require employees to obtain permission anytime they wish to visit Respondent's facility when off duty. In addition, the Acting General Counsel argues the rules are unlawful because a reasonable employee could construe them to inhibit Section 7 activities. In support of his contentions, the Acting General Counsel cites *Teletech Holdings, Inc*., 333 NLRB 402 (2001) (rule barring the distribution of literature without "proper authorization" unlawful because it was not limited to working time nor working areas and because it required prior managerial authorization) and *Tri-County Medical Center*, 222 NLRB 1089 (1976) (rule barring off-duty employees access to parking lots, gates, and other outside nonworking areas unlawful in the absence a business justification). Respondent, noting that neither of these access rules mention or implicate any type of Section 7 activity, argues that both rules are analogous to a rule found lawful by the Board in *Lafayette Park Hotel*, supra at 827.

I concur with Respondent's contention that these rules are essentially indistinguishable from hotel rule 6 found lawful in the *Lafayette Park Hotel* case. There the Board, citing *Brunswick Corp*., 282 NLRB 794, 795 (1987), found hotel rule 6 could not be read by reasonable employees as requiring prior managerial permission in order to engage in protected activities on their free time in nonwork areas. Plainly, Respondents rules address only the use of "public" areas inside the hotel facility. As such the rules are inapplicable to parking lots and exterior nonwork areas such as those addressed in the *Tri-County* case, or even nonwork interior areas. And as the rules make no ref-

erence to the distribution of literature, the Acting General Counsel's reliance on the *Teletech Holdings* case is misplaced. Accordingly, I recommend dismissal of complaint paragraphs 4(2) and 4(3).

3. The confidentiality rules

Complaint paragraphs 4(4) and 4(5) allege that Respondent maintains confidentiality rules that violate Section 8(a)(1). Complaint paragraph 4(4) alleges Respondent's broad elaboration of its confidentiality policy (Rule 2.21) is unlawful. That provision provides:

> ***Confidentiality****: All employees are prohibited from disclosing to anyone outside the Company, indirectly or directly, any information about the Company which has not been shared by the Company with the general public. This type of disclosure includes participation in internet chat room or message boards. Exceptions to the rule include disclosure which are authorized by the Company or required or authorized by the law. This information includes, but is not limited to:*
>
> - Company financial data
> - Plans and strategies (development, marketing, business)
> - Organization charts, salary structures, policy and procedures manuals
> - Research or analyses
> - Customer or supplier lists or related information.
>
> *The property or Corporate Law department should be consulted whenever there is a question about whether the information is considered confidential. Any failure to uphold this policy should be communicated to the Law department and may result in immediate Separation of Employment. All managerial, supervisory, and selected positions are required to comply with the "Use and Disclosure of Confidential Information" policy.*

Complaint paragraph 4(5) challenges conduct standard No. 10, which states: "*Employees will not reveal confidential information to unauthorized persons*."

Although the allegation at complaint paragraph 4(4) suggests that the Acting General Counsel regards the confidentiality rule (Jt. Exh. 1, p. 2.21) as unlawful in its entirety, the argument contained in his brief dispels any such notion. Thus, his brief states:

> Included within Respondent's broad definition of what constitutes confidential information, is the prohibition against the disclosure of "organizational charts, salary structures, policy and procedure manuals." The rule further defines confidential information as "any information about the company which has not been shared by the Company with the general public."

(AGC Br. pp. 12–13.) Citing *Double Eagle Hotel & Casino*, 341 NLRB 112 (2004) and *Automatic Screw Products*, 306 NLRB 1072 (1992), the Acting General Counsel argues that the rule is "unlawful on its face" because it would inhibit union and protected concerted activity by precluding employees from discussing wages and working terms and conditions as well as freely contacting and conferring union representative, Board agents, or other third parties on "internet chat rooms or message boards" concerning these particular subjects.

Respondent's argument, which draws a distinction between "salary structures" and an individual employee's wage rate, argues that nothing in these two rules implicate matters protected by Section 7. In addition, Respondent argues that this rule is analogous to the confidentiality rules the Board found lawful in *Lafayette Park Hotel*, supra, *Super K-Mart*, 330 NLRB 263 (1999), and *Mediaone of Greater Florida, Inc*., 340 NLRB 277 (2003). I agree.

At first blush, Respondent's prohibition against the disclosure of information contained in organizational charts, salary structures, and policy and procedures manuals is arguably an explicit restriction on Section 7 activity and thus unlawful on its face as argued by the Acting General Counsel. Thus, in the context of union organizing activity, an organizational chart typically contains information of particular significance in determining the scope of an appropriate unit, the unit placement of particular individuals, and other critical details of significance to the employee organizational effort. Arguably, rules permitting employers to muzzle their employees with respect to this type of information, whether gained from a first-hand observation of an organizational chart, or have come to know by way of their employment experience, would be clearly destructive of matters at the core of the Section 7 right to participate in the planning of a union organizing strategy with professional organizers. Similarly, policy and procedures manuals often contain significant information about the terms and conditions of employment for employees. For example, it is not unusual for these types of documents in the hotel industry to contain production standards and rules applicable to particular groups of employees such as room cleaners, or even minutiae addressing the expected conduct of particular groups having contact with the public. And finally, after employees select a representative, sharing information they have gained concerning the employer's salary structures with their professional bargaining representative to fashion bargaining demands would be of particular importance.

But having said that, the Board's decision in *Mediaone*, supra, has already held that an employer's rule that barred the disclosure of "organizational charts and databases" (the latter would almost certainly contain an employer's salary structures) among numerous other matters do not explicitly restrict Section 7 activity. And as to whether employees would reasonably construe such rules as inhibiting Section 7 activity, the Board majority, by the following language, gives the overall context in which the doubtful portions appear considerable significance:

> [W]e do not believe that employees would reasonably read this rule as prohibiting discussion of wages and working conditions among employees or with a union. Although the phrase "customer and employee information, including organizational charts and databases" is not specifically defined in the rule, it appears within the larger provision prohibiting disclosure of "proprietary information, including *information assets* and *intellectual property*" and is listed as an example of "intellectual property." Other examples include "business plans," "marketing plans," "trade secrets," "financial information," "patents," and "copyrights." Thus, we find, contrary

> to our dissenting colleague, that employees, reading the rule as a whole, would reasonably understand that it was designed to protect the confidentiality of the Respondent's proprietary business information rather than to prohibit discussion of employee wages.[6] "Clearly, businesses have a substantial and legitimate interest in maintaining the confidentiality of proprietary information." *Lafayette Park*, supra, 326 NLRB at 826 (employer rule prohibiting "divulging Hotel private information to employees or other individuals or entities that are not authorized to receive that information" found lawful*); Super K-Mart*, supra, 330 NLRB at 263, 264 (employer rule stating that "Company business and documents are confidential" and "disclosure of such information is prohibited" found lawful). [Footnotes omitted]

340 NLRB 279. Although Respondent's rule contains no magic words such as "intellectual property" or "proprietary assets," the examples set forth in Respondent's rules plainly establish that these are the interests Respondent seeks to protect. For this reason, I find it doubtful that employees reading Respondent's confidentiality rules would miss that notion or misinterpret them as a restriction on their Section 7 right to disclosure information they have gained that would advance their interests concerning their wages, hours and other terms and conditions of employment. Accordingly, I recommend dismissal of these allegations.

4. The computer usage rules

The complaint paragraphs 4(6) and 4(7) allege that Respondent's computer usage policy (Jt. Exh. 1, p. 2.13-2.16) violates the Act. The rule at issue appears in the handbook's "Computer Usage" section:

> **Computer Usage**: Computer resources are Company property and are provided to authorized users for business purposes. The company has the right to review or seize computer resources, including hardware, software, documents and electronic correspondence.
>
> * * *
>
> **Confidentiality:**
> Do not disclose or distribute outside of Rio's any information that is marked or considered confidential or proprietary unless you have received a signed non-disclosure agreement through the Law Department. In some cases, such as with Trade Secrets, distribution within the Company should be limited and controlled (e.g., numbered copies and a record of who has received the information). You are responsible for contacting your department manager or the Law Department for instructions.
>
> * * *
>
> **General Restrictions:**
> Computer resources may not be used to:
> - Commit, aid or abet in the commission of a crime
> - Violate local, state or federal laws
> - Share confidential information with the general public, including discussing the company, its financial results or prospects, or the performance or value of company stock by using an Internet message board to post any message, in whole or in part, or by engaging in an internet or online chat room
> - Convey or display anything fraudulent, pornographic, abusive, profane, offensive, libelous or slanderous
> - Send chain letters or other forms of non-business information
> - Seek employment opportunities outside of the Company
> - Invade the privacy of or harass other people
> - Solicit for personal gain or advancement of personal views
> - Violate rules or policies of the Company
>
> Do not visit inappropriate (non-business) websites, including but not limited to online auctions, day trading, retail/wholesale, chat rooms, message boards and journals. Limit the use of personal email, including using streaming media (e.g., video and audio clips) and downloading photos.

The Acting General Counsel urges that the Board overrule *Register Guard*, 351 NLRB 1110 (2007), and reinstate the principles in existence prior to that decision. Those principles, the Acting General Counsel argues, required an employer, with limited exceptions, to permit its employees to engage Section 7 communications using company equipment if the employer permitted other nonwork related communications using employer property. I decline to address the wisdom, or lack thereof, of the *Register Guard* decision as that is a matter for the Board to consider and decide.

In addition, the Acting General Counsel, noting that employees may use the Company's computers to access their personal email and to use of "streaming media" on a limited basis, argues that the restrictions contained in the Company's computer usage policy "inhibit employee's Section 7 rights, as they do not allow employees to express concerns which may later become logical outgrowths of group concerns or discuss wages or working conditions." The restrictions the Acting General Counsel refers to are those bullet points set out above. In framing this argument, the Acting General Counsel assumes that the word "confidential" as used in the computer usage policy parallels that found in the confidentiality rules. Respondent disputes the Acting General Counsel's implicit assertion that the words "confidential information" as used here could reasonably be read to limit discussions of matters covered by Section 7. I agree.

Contrary to the Acting General Counsel's assertion, the computer usage rule does not explicitly import the definition of "confidential" from the handbook's confidentiality rules or refer to the subsequently appearing confidentiality rule at all. Nor would one expect it to where, as here, I have concluded in agreement with Respondent that the scope of the confidentiality rule gains its meaning from its from its specific context. Hence, as with the conclusions reached above concerning the confidentiality rule, I find the computer usage rule contains no explicit restriction on Section 7 rights. That being so, the Acting General Counsel had the burden of establishing by a preponderance of the evidence that employees would reasonably construe the computer usage rule so as to prohibit Section 7 activity. I find the Acting General Counsel failed to meet that burden. Accordingly, I recommend dismissal of complaint paragraph 4(6).

5. Rules governing the use of camera and audio visual devices at work

The General Counsel alleges that two of Respondent's rules prohibiting the use of camera phones or other audio visual devices at work unlawfully interfere with employee Section 7 activities. See complaint paragraphs 4(8) and 4(10). These rules are enumerated as conduct standards 24 and 35, respectively, in the employee handbook. They provide:

> 24. Personal pagers, beepers and cell phones worn by employees must not be visible or audible to guests and should not impact job performance. The use of personal cellular/digital phones is prohibited while on duty, but is (??not) allowed during break time in designated break areas. *Camera phones may not be used to take photos on property without permission from a Director or above.*
>
> 36. Cameras, any type of audio visual recording equipment and/or recording devices may not be used unless specifically authorized for business purposes (e.g. events).

The Acting General Counsel argues that as these rules are unlawful because employees could be reasonably interpret them to restrict the photographing or filming of fellow employees engaged in concerted activities such as picketing, or from photographing or filming unsafe working conditions. Respondent argues that the Board's decision in *Flagstaff Medical Center*, 357 NLRB No. 65 (2011), requires the dismissal of this allegation.

These two rules do not explicitly restrict Section 7 activity, nor, as previously stated, is there any evidence that Respondent adopted these rules in response to union activity or applied them to inhibit such activity. Hence, the question then becomes whether the Acting General Counsel met his burden of showing that employees would reasonably interpret the rules as a restriction on their protected activities.

As a general rule, an employer may restrict photographing and filming particularly within its interior work areas in order to prevent the disruptions to its operations and to protect against security breaches.[4] See e.g., *Bill's Electric*, 350 NLRB 292, 295 (2007) (salts who voluntarily participated with a union agent's videotaping of their employment application process after the employer's request that the filming cease amounts to misconduct outside the protection of the Act). It is not uncommon for business organizations to regularly provide its employees with training emphasizing the well-recognized practice restricting onsite filming and photographing. Given the widespread recognition of this practice, I am highly dubious of the Acting General Counsel's core argument that employees would reasonably interpret these rules as a restriction against the type of protected activity cited in his brief, i.e., picketing (likely to occur outside) and abnormally dangerous working conditions.

The Acting General Counsel's argument fails to gain the least bit of momentum from his efforts to distinguish the *Flagstaff Medical Center* case. The Acting General Counsel asserts, in effect, that the key component of the Board's decision in that case rests in the requirements under the Health Insurance Portability and Accountability Act of 1996 (HIPPA). Because there is no comparable legal duty to protect the privacy of hotel guests, the Acting General Counsel argues, the *Flagstaff Medical Center* case is inapplicable here.

I find the Acting General Counsel's arguments concerning the import of the *Flagstaff Medical Center* decision fail for two principal reasons. First and foremost, the Acting General Counsel's argument mirrors the dissent's position in *Flagstaff Medical Center* that employees would reasonably read the photography ban to bar taking a picture of a smoking electrical outlet to support their efforts to improve safe working conditions. Obviously the Board majority did not share the dissenting member's outlook and it is the majority's view of the law that I am obliged to apply.

And secondly, I disagree with the Acting General Counsel's otherwise limited view that the outcome in *Flagstaff Medical Center* concerning the photography ban is largely predicated on HIPPA privacy requirements. In effect, the Acting General Counsel presupposes that employers should be restricted in establishing similar workplace rules to those instances where the law imposes a specific duty. In my judgment, this contention is flawed. In the same sense that an employer may discharge an employee for a good reason, bad reason, or no reason at all so long as it is not a reason prohibited by law, the law recognizes the right of an employer to establish workplace rules within a similar framework. As Respondent argues, a hotel and a casino operation has a strong interest in protecting and guarding the privacy of its guests even though the guests' privacy interests do not always enjoy some form of legal protection similar to that of hospital patients. In the overwhelming majority of instances, hotel employees understand and respect the privacy of the hotel guests. This common recognition on the part of hotel employees augurs against a conclusion that they would reasonably read a photography and filming ban as being designed to chill their Section 7 activities. Hence, absent some compelling evidence to the contrary not present here, I find it likely that the typical hotel employee would perceive that the rule at issue here has nothing at all to do with their right to engage in union or concerted activities. For these reasons, I have concluded that the Acting General Counsel failed to establish by a preponderance of the evidence that Respondent violated the Act by merely maintaining a rule banning the taking of photos and filming at its workplace. Accordingly, I recommend dismissal of this allegation.

6. Rule against walking off the job

Complaint paragraph 4(9) sets forth the last rule at issue. That rule, conduct standard 28, provides:

> *28. Employees who walk off the job during shift will be considered to have abandoned their job and voluntarily separated their employment."*

This rule requires little discussion. It is devoid of ambiguity. It is an explicit restriction on Section 7 rights. The Act protects the right of employees to engage in concerted activities, including the right to strike without prior notice. *NLRB v. Erie Resis-*

[4] Indeed, the Federal courts famously do likewise. See *Hollingsworth v Perry*, 558 U.S. 183 (2010).

tor Corp., 373 U.S. 221 (1963); *Montefiore Hospital*, 621 F.2d 510 (2d Cir. 1980). The Board has long held that an employer violates Section 8(a)(1) by maintaining a blanket prohibitions against work stoppages, i.e., those that fail to distinguish between protected and unprotected work stoppages. *Catalox Corp*., 252 NLRB 1336, 1339 (1980). Respondent's work-stoppage rule amounts to the type of overly broad ban prohibited by the Board. For this reason, I find this Respondent's walkout rule violates 8(a)(1).

CONCLUSION OF LAW

By maintaining a workplace rule that prohibits employees from engaging in a walkout, Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

My recommended order requires Respondent to expunge its rule prohibiting employees from engaging in a walkout protected by Section 7 of the Act and to post the attached notice to employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a workplace rule prohibiting employee walkouts protected by Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Expunge from its workplace rules any prohibition against employees engaging in a walkout protected by Section 7 of the Act.

(b) Within 14 days after service by the Region, post at its Rio All-Suites facility in Las Vegas, Nevada, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 5, 2011.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., March 20, 2012.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain a workplace rule that prohibits employees from engaging in a walkout protected by Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remove from our rules any prohibition against employees engaging in a walkout protected by Section 7 of the Act.

CAESARS ENTERTAINMENT D/B/A RIO ALL-SUITES HOTEL AND CASINO

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

EXHIBIT B

CASE NO. 17-71353 [CONSOLIDATED WITH 17-73379]

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner/Respondent,

v.

CAESARS ENTERTAINMENT D/B/A RIO ALL-SUITES HOTEL AND CASINO,

Respondent,

and

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO,

***Intervenor*.**

ON APPEAL FROM NATIONAL LABOR RELATIONS BOARD CASE NO. 362 N.L.R.B. NO. 190

OPPOSITION TO MOTION OF THE NATIONAL LABOR RELATIONS BOARD FOR PARTIAL REMAND AND PARTIAL SUMMARY JUDGMENT

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1. International Union of Painters and Allied Trades District Counsel, 15, Local 159, AFL-CIO, Intervenor in Case No. 17-71353 and Petitioner in Case No. 17-73379, hereby opposes the National Labor Relations Board's motion for partial remand and partial summary enforcement.

2. The Board has already rejected a similar effort by the employer. That motion for reconsideration was filed on December 18, 2017, and is attached as Exhibit A to this opposition. That motion was immediately rejected by the Board as untimely. *See* NLRB Executive Secretary Office Letter (Dec. 19, 2017), attached as Exhibit B. Notably, in the letter from the Executive Secretary, the Board took the position:

> Under the clear terms of Section 10(e) of the Act, the Board ceased to have jurisdiction over the case at that point [when the administrative record was filed]. The Board accordingly has no jurisdiction to entertain your motion and therefore it will not be forwarded to the Board for consideration.

The Board, thus, has already ruled that it has no jurisdiction, even when faced with the same request by the employer. The effort now by the General Counsel to seek a similar remand should be rejected. The request by the General Counsel is directly contrary to the Board's ruling rejecting the same motion by the employer.

3. There is no ruling or order by the Board that would support this request for remand. Presumably, if the Board believed that remand was appropriate, it, as the Agency, would have issued an order or ruling requesting remand. There is no evidence that it has issued any such order or other document confirming that it wishes this case remanded.

Here, it appears at best this is the suggestion of its counsel. The law, however, is clear that it requires Board action, not the suggestion of the Board's counsel before the Board itself may take action. This Court cannot rely upon the suggestion of counsel, absent an order by the Board itself, indicating that it wants

this case remanded. *See NLRB v Food Store Emps., Local 347*, 417 U.S. 1 (1974), and *Hosp. & Serv. Emps. Union, Local 399 v. NLRB*, 743 F.2d 1417, 1427 (9th Cir. 1984).

Here, it is particularly appropriate to make this argument since the Board composition has changed after the Board issued the Decision on which the Board relies, *Boeing Co.*, 365 N.L.R.B. No. 154 (Dec. 14, 2017). At the time that Decision was reached, there were five members of the Board. The Board is now reduced to four members, two of whom were opposed to the Board's decision in *Boeing Co.* and two of whom supported it. Thus it isn't clear that the continuing four member Board approved this request for remand which effectively seeks to have the new rationale in *Boeing Co*. applied to this case. Absent proof that the Board has actually issued an order seeking remand, the Court should deny the motion.

4. This motion should be denied because the Petitioner and Intervenor have filed a motion for reconsideration in the *Boeing Co.* case. As noted, the *Boeing Co*. case is the basis of the General Counsel's request that this case be remanded. Here, the International Union of Painters, District Council 15, Local 159 has filed a motion to intervene in the *Boeing Co.* case and to seek reconsideration of that Decision. A copy of the Union's motion is attached as Exhibit C. So far the Board has not ruled on the motion.

5. This motion raises a number of issues. First, as it points out, the Board in the *Boeing Co.* case purported to overrule the Board's Decision in *this case* without granting due process or notice to the Union to oppose that Decision. Second, Member Emanuel was a member of the five member Board that issued the *Boeing Co*. Decision. As that motion makes clear, Member Emanuel could not participate because his former law firm, Littler Mendelson, had represented the parent company of the employer in this case. Moreover, as the motion points out,

Member Emanuel's former firm, Littler Mendelsohn, was conflicted from participating in the *Boeing Co*. case because it had represented the Boeing Company. Thus, there is a conflict of interest regarding Member Emanuel's involvement in the *Boeing Co.* case, so long as it affected, as it did, this case pending in this Court. Until the Board resolves the motion for reconsideration, this motion in this case is premature.

6. Member Emanuel cannot be involved and must recuse himself from consideration of any motion or other issue in this case. As noted in the attachments to Exhibit C, his law firm represented the employer and/or its parent companies. Thus, he is conflicted from being involved in this Decision, including whether this case should be remanded back to the Board for reconsideration.

7. Although *Boeing Co.* purports to be retroactive "to all other pending cases" (365 N.L.R.B. No. 154, slip op. at 17), that retroactivity cannot apply to this case. Under the Board's reading of "retroactivity," the *Boeing Co.* case would be applied to all cases no matter how old and irrespective of the procedural posture of the case. Employers and unions under the Board's reading[1] of retroactivity could seek to have the *Boeing Co.* rationale applied to any case, even if it goes back to the initial date of the *Lutheran Heritage Village-Livonia*, 343 N.L.R.B. 646 (2004), standard. That rationale cannot apply in this case for the reasons argued in Paragraph 2, above. *See* Exhibit A.

The Board essentially concedes that, because this case is in this Court and the record has been filed, it has no jurisdiction over the case. It is not "pending" in any sense before the Board. It may be pending before this Court, but it is final as to the Board. The Board would have this Court unwind that finality and then

[1] This is the reading of the phrase by Board counsel and not the Board. Until the Board clarifies its meaning, the attempt by its counsel to expand the meaning should be rejected. *Hosp. & Serv. Emps. Union, Local 399. v. NLRB,* 743 F.2d 1417.

attempt to apply its definition of retroactivity to the case later. The Board offers no support for the notion that an administrative agency can unwind a final decision in another case. As noted, this argument would unwind every case decided since at least 2004, relying on *Lutheran-Heritage Village Livonia*, 343 N.L.R.B. 646. In summary, then, even though *Boeing Co.* may be retroactive to "all pending cases," that does not apply to a case that is final as to the Board and over which the Board has no jurisdiction because the record has been filed in this Court.

7. The Board found a confidentiality rule, appearing at page 2.21 of the handbook, to be unlawful. *See* Decision of Board 2-3. As the Board notes, the Board has long held that such confidentiality rules are unlawful. The Decision in this case will not change, even based on the *Boeing Co.* case. The Board's motion to remand for reconsideration of this rule is unwarranted. The Decision in the *Boeing Co*. case will not affect the outcome.

8. The remand motion is a veiled attempt to preclude the Union from pursuing its Petition for Review. As the Board's motion notes, the Union filed a timely Petition for Review, which, in part, challenges the Board's failure to find certain contested rules unlawful. If the Court remands, the Court should remand everything except the uncontested rule for consideration to the Board. Unless this Court specifically remands those rules that were not found unlawful, the Board will take the position that those rules were not remanded, and reconsideration of those rules will not be before it. If the Court remands any part, it must remand everything so that the Board may consider everything, not just the rules that the Board found to be unlawful and that the General Counsel now contends may be governed by the *Boeing Co*. case.

To be clear, then, any remand must encompass *all aspects of the case*, except the one uncontested rule, including those rules that were not found to be

unlawful, as well as the Union's challenge to the extent and appropriateness of the remedy.

9. The Board does not seek remand of the one rule that the employer does not contest. On that issue, the Union agrees that the Board's Order should be enforced in full, as to that Order with the requested remedy as to that unlawful rule.

Dated: February 14, 2018

Respectfully Submitted

/s/ David A. Rosenfeld

By: David A. Rosenfeld
Caren P. Sencer
WEINBERG, ROGER & ROSENFELD
A Professional Corporation

Intervenor, INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO

143309\955082

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 32(g)(1), Proposed Intervenor certifies that Intervenor's **OPPOSITION TO MOTION OF THE NATIONAL LABOR RELATIONS BOARD FOR PARTIAL REMAND AND PARTIAL SUMMARY JUDGMENT** contains 1,416 words of proportionately-spaced, 14 point type, and that the word processing system used was Microsoft Word 2010.

Dated: February 14, 2018

Respectfully Submitted

/s/ David A. Rosenfeld

By: David A. Rosenfeld
Caren P. Sencer
WEINBERG, ROGER & ROSENFELD
A Professional Corporation

Intervenor, INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO

EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

CAESARS ENTERTAINMENT CORP. D/B/A RIO ALL-SUITES HOTEL AND CASINO Respondent, and INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 19 AFL-CIO Charging Party.	Case No. 28-CA-060841

MOTION FOR RECONSIDERATION
OR REOPENING THE RECORD AND REHEARING

Respondent Caesars Entertainment Corporation d/b/a Rio All-Suites Hotel and Casino ("Rio" or the "Company") requests that the National Labor Relations Board ("Board" or "NLRB") reconsider its original order in this case following the Board's intervening decision in *The Boeing Company*, slip op. (NLRB Dec. 14, 2017) that not only overruled a portion of the Board's original order in this case, but also abandoned the legal standard under which the entire case was decided and retroactively adopted a new standard. Based on this new legal standard and the decision to overrule a portion of the original order, and pursuant to the NLRB Rules and Regulations § 102.48(d)(1), the Board's original order is inappropriate.

I. BACKGROUND AND PROCEDURAL HISTORY

Rio is one of several gaming and hospitality properties in Las Vegas, Nevada that are owned and operated by Caesars Entertainment Corporation. The Rio property employs more than 3,000 employees. All 3,000 employees receive and acknowledge the same employee handbook. The handbook governs the terms and conditions of employment, in some part, for Rio's total workforce.

The International Union of Painters and Allied Trades, District Council 15, Local 19 AFL-CIO ("Local 19") does not represent Rio employees, but nonetheless challenged ten rules in the handbook by filing a variety of unfair labor practice charges.

The Board subsequently filed a complaint asserting much the same charges. In its complaint, the Board alleged that Rio violated section 8(a)(1) of the Act by restricting, among other things, audiovisual recording in the workplace, disclosure of certain confidential information to the public, walking off the job during shifts, and using the Company's e-mail system and other computer resources for unapproved non-business purposes.

After holding a hearing, the ALJ sustained almost none of the Board's charges. In a partially divided decision, the Board reversed the ALJ's rulings on both the no-recording and confidentiality rules. As to the no-recording rules, the majority found that "photographing and videotaping is protected by Section 7 when employees are acting in concert for their mutual aid," and then concluded that reasonable employees would read the rules to restrict section 7 activity. The Board made much the same finding with respect to Rio's confidentiality rule, applying its decision in *Martin Luther Mem'l Home, Inc. d/b/a Lutheran Heritage Village-Livonia ("Lutheran Heritage")*, 343 NLRB 646 (2004), to find that the rule would be read by a reasonable employee as restricting section 7 activity. The portion of the case involving Rio's e-mail policy was remanded to an ALJ and has yet to be decided by the Board.

Nearly two years after the original order issued, the Board filed an application for enforcement in the United States Court of Appeals for the Ninth Circuit. Meanwhile, the Board decided *The Boeing Company*, a case involving a challenge to a similar no-recording rule. This time, the Board not only found that the no-recording rule was lawful, but also overruled its earlier finding in this case that "a similar rule was unlawful." *The Boeing Company*, slip op. at 5 n.12 (NLRB Dec. 14, 2017). According to the Board, the "majority in *Rio All-Suites Hotel* improperly limited [an earlier Board decision] *Flagstaff* to the facts of that case and failed to give appropriate

weight to the casino operator's interests in 'safeguarding guest privacy and the integrity of the Respondent's gaming operations.'" *Id.*, slip op. at 19 n.89. In overruling the Board's finding as to the no-recording rule in this case, the Board also adopted a new standard for evaluating all facially neutral handbook rules, replacing *Lutheran Heritage*. The new standard asks whether the rule, "when reasonably interpreted, would potentially interfere with Section 7 rights," and requires the Board to "evaluate two things: (i) the nature and extent of the potential impact on NLRA rights, *and* (ii) legitimate justifications associated with the requirement." *Id.*, slip op. at 14. This standard, the Board concluded, will apply "retroactively . . . to all pending cases." *Id.*, slip op. at 17.

II. THE BOARD SHOULD TAKE EXCLUSIVE JURISDICTION TO RECONSIDER THE CASE UNDER THE RETROACTIVELY APPLIED *BOEING* STANDARD

Motions for reconsideration should be granted where an intervening decision rendered the Board's original order inappropriate. *See R&H Masonry Supply, Inc.*, 258 NLRB 1220, 1221 (1981) (modifying original order to delete language no longer necessary following intervening adjudication). The Board has not considered any of the allegations in the original complaint under the retroactively applied *Boeing* test. *Cf. Kahn's & Co.*, 256 NLRB 930, 931 (1981) (reconsideration appropriate where substantial issue not previously considered by Board in issuing its original decision and order). Because the Board adopted the new test after issuing the original order in this case and decided to apply that test retroactively, the test's application was not even potentially at issue during the hearing or Board proceedings in this case. *See Detroit Newspaper Agency*, 361 NLRB 799, 800 (1999) (reconsideration appropriate where matter was not potentially at issue during trial). With the Board's intervening decision, it is only logical that the Board take exclusive jurisdiction and reconsider its original order because, most importantly, the Board decided to adopt *and* retroactively apply a new legal that governs every aspect of the case.

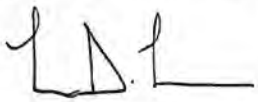
The Board's new standard applies to all handbook rules that potentially interfere with section 7 activity. *See Boeing*, slip op. at 19. The Board's original order applied the now-abandoned *Lutheran Heritage* standard in finding that three handbook rules constituted unlawful

interference with protected rights in violation of section 8(a)(1) of the Act. The Board's finding with respect to one such rule—Rio's restriction on recording—was expressly and categorically overruled. *See Boeing*, slip op. at 19 n.89. In addition, and by the Board's own terms, the remaining two rules must be reviewed under the new *Boeing* standard because the complaint in this case alleges that they interfere with section 7 rights and that new standard is not only meant to determine whether they do, but it also applies retroactively to the original order in this case that has not yet been enforced and is therefore still pending.

III. CONCLUSION

For these reasons, Rio requests that the Board take exclusive jurisdiction to reconsider its original decision in this case, allowing the parties to fully brief the issues under the retroactive new standard, or, alternatively, order that the record be reopened for further factfinding pursuant to the Board's intervening decision in *Boeing*. Given that the Board's enforcement application is subject to a briefing schedule with a deadline in ten days, Rio requests that the Board decide this motion expeditiously to avoid duplicative filings.

Respectfully submitted this 18th day of December, 2017.

By: 

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Counsel for Caesars Entertainment Corporation d/b/a Rio All-Suites Hotel and Casino

CERTIFICATE OF SERVICE

This is to certify that the undersigned caused to be served on December 18, 2017, a copy of the MOTION FOR RECONSIDERATION OR REOPENING THE RECORD AND REHEARING via U.S. mail to the following:

Cornele A. Overstreet
Regional Director
National Labor Relations Board, Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004-3099

Linda Dreeben
Attn. Usha Dheenan and Eric Weitz
National Labor Relations Board
1015 Half Street, SE
Washington, D.C. 20570

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EXHIBIT B

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December 19, 2017

Lawrence D. Levien
James C. Crowley
Akin Gump Strauss Hauer & Feld, LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036

Re: Caesars Entertainment Corp. d/b/a RIO All-Suites Hotel and Casino
Case 28-CA-060841

Dear Mr. Levien and Mr. Crowley:

This letter acknowledges receipt of the Respondent's Motion for Reconsideration or Reopening the Record and Rehearing, filed with the Board on December 18, 2017 in the subject case.

Section 102.48(c)(2) of the Board's Rules and Regulations provides that any motion for reconsideration of a Board decision shall be filed within 28 days, or such further period as may be allowed, after service of the decision. Respondent's motion seeks reconsideration of the Board's Decision and Order which was issued on August 27, 2015. As stated above, the motion for reconsideration here was filed on December 18, 2017, more than two years after the issuance of the Board's decision in this matter. Accordingly, the motion for reconsideration is untimely.

Moreover, this case is currently pending in the United States Court of Appeals for the Ninth Circuit on the application of the National Labor Relations Board to enforce the Board's August 27, 2015 Decision and Order (362 NLRB No. 190). Section 10(d) of the National Labor Relations Act ("the Act") provides that "the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it." 29 U.S.C. § 160(d). However, Section 10(e) of the Act makes clear that such power terminates "[u]pon the filing of the record with [the court]." 29 U.S.C. § 160(e); *accord Ford Motor Co. v. NLRB*, 305 U.S. 364, 368 (1939) ("The authority conferred upon the Board by Section 10(d) . . . end[s] with the filing in court of the transcript of record."). From that point forward, "the jurisdiction of the court [is] exclusive." 29 U.S.C. § 160(e); *see also Kronenberger v. NLRB*, 496 F.2d 18, 19 (7th Cir. 1974) (the court's "jurisdiction . . . [is] concurrent with that of the Board until the transcript of record [is] filed").

Here, the administrative record in the above-referenced case was filed with the Ninth Circuit on June 20, 2017. Under the clear terms of Section 10(e) of the Act, the Board ceased to have

jurisdiction over the case at that point. The Board accordingly has no jurisdiction to entertain your motion, and therefore it will not be forwarded to the Board for consideration.

Very truly yours,

/s/ Farah Z. Qureshi
Associate Executive Secretary

cc: Parties
Region

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Attorneys for Proposed Intervenor , INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

THE BOEING COMPANY and SOCIETY OF PROFESSIONAL ENGINEERING EMPLOYEES IN AEROSPACE, affiliated with INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 2001,	No. 19-CA-090932; 19-CA-090948; 19-CA-095926 **MOTION TO INTERVENE OF THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO/MOTION FOR RECONSIDERATION**

International Union of Painters and Allied Trades, District Council 15, Local 159, AFL-CIO, the Proposed Intervenor in this matter, hereby moves for an order permitting it to intervene in this proceeding, for the purpose of seeking Reconsideration of the Board's Decision, which affects the Proposed Intervenor.

1. The Proposed Intervenor is the Charging Party in Case No. 28-CA-060841, *Caesars Entertainment Corp.*, 362 N.L.R.B. No. 190 (2015). That case is currently pending based upon a Petition for Enforcement filed by the General Counsel in the Ninth Circuit. It is Case No. 17-71353. The Proposed Intervenor is an Intervenor in that case. The employer is resisting enforcement of the Board's Order.

2. The Charging Party is also Petitioner in a Petition for Review filed in that Court. That case is Case No. 17-73379. Those cases have been consolidated by the Court, and the employer's opening brief has been filed in the consolidated cases.

3. The Board's Decision in this case, *Boeing Co.*, 365 N.L.R.B. No. 154 (2017), potentially affects the outcome of those Petitions for Review and the Board's Order in *Caesars Entertainment Corp*. In particular, in this case, the majority, consisting of Chairman Miscimarra (now departed) and Members Kaplan and Emanuel, specifically overruled the Board's Decision in *Caesars Entertainment Corp*. The Board also incorrectly adopted a finding that was not a finding of the Board but was a statement of then Board Member Johnson. *See Boeing Co.*., 365 N.L.R.B. No. 154 at p. 19 n.89.

4. This Decision and this footnote may have a material impact upon the outcome of a prior decision of the Board in *Caesars Entertainment Corp.*, which is now final. Caesar's Entertainment has already sought Reconsideration before the Board in *Caesars Entertainment Corp*. Indeed, the Board doesn't have the power to even rule on that case since it is pending in the Ninth Circuit and the Certificate of Record has been filed. *See* 29 U.S.C. § 160(e). The Board has rejected the Motion for Reconsideration filed by Caesar's Entertainment, relying on Section 10(e). A copy of the Board's Order rejecting the motion for reconsideration is attached as Exhibit A. This letter, with its citations, makes it clear that the Board recognized that it did not have jurisdiction under Section 10(d) to reconsider the *Caesars Entertainment Corp.* case and it certainly had no right to reconsider its *Caesars Entertainment Corp.* decision in this case pending before the Board. Presumably, Caesar's Entertainment will continue to rely on that footnote in resisting enforcement and the Charging Party's Petition for Review.

5. The Board's footnote and Decision were issued without due process or notice to the Charging Party. This violates the rights of the Charging Party.

6. This Decision, issued by now departed Chairman Miscimarra with Members Emanuel and Kaplan, has another infirmity. Member Emanuel was formerly a member of Littler Mendelson before he took his position on the Board. His firm, in multiple cases, represented the

Boeing Company. Attached as Exhibit B is a copy of a Lexis search showing numerous cases in which his firm was counsel to the Boeing Company. We do not know what other services Littler Mendelson and/or Mr. Emanuel rendered directly to the Boeing Company, but, given this record, we assume, as the Board must, that there are many other situations or cases where Littler Mendelson, throughout the country, rendered services to the Boeing Company. This renders Mr. Emanuel disqualified, and he should have recused himself from deciding the *Boeing Co.* case and certainly *Caesars Entertainment Corp*. We note that there is no reason to believe that Littler Mendelson has discontinued representation of the Boeing Company in these cases or in other matters. We also have no reason to doubt that Member Emanuel may have been consulted about the cases or issues in the cases.

7. Attached as Exhibit C is a copy of a list of cases in which Littler Mendelson represented Caesar's Entertainment. This further proves that Member Emanuel should have recused himself from either the Decision or any comment that may have effect on the *Caesars Entertainment Corp.* case because of his firm's past representation and/or potentially current representation of Caesar's Entertainment. We note that there is no reason to believe that Littler Mendelson has ceased its representation of Caesar's Entertainment in some of these cases or in other matters. We also have no reason to doubt that Member Emanuel may have been consulted about the cases or issues in the cases.

8. Attached as Exhibit D is a copy of the Motion that the Committee to Preserve the Religious Right to Organize has filed with the Board seeking the recusal of Member Emanuel in all cases. That Motion is incorporated by reference. The Board has not ruled on this Motion. We understand it is pending. The Motion explains why Member Emanuel should have recused himself from participating in this case. Now departed Chairman Miscimarra properly recused himself from cases where his firm had been involved, Member Emmanuel should have done the same. *See, e.g.*, *PCMC/Pac. Crane Maint. Co.*, 362 N.L.R.B. No. 120, p. 1 n.2 (2015) (Chairman Miscimarra's firm represented the Pacific Maritime Association, which was indirectly affected even though it was not a direct party.).

9. Member Emanuel has benefitted his firm's clients and himself by being involved in this case. This violates every applicable ethical standard. Moreover, the Decision was issued without notice and in violation of the due process rights of the Proposed Intervenor. Specifically, it violates the Administrative Procedure Act, 5 U.S.C. § 554. It violates the Board Rules of Procedure in all respects about giving notice to parties and opportunity to appear and present evidence. It violates the Due Process Clause of the U.S. Constitution, Amendment V.

10. The Decision furthermore violates Executive Order No. 13771, 82 Fed. Reg. 9339 (Jan. 30, 2017), which directs agencies, presumably including the NLRB, to eliminate two regulations before implementing any new regulation. The Board's Decision constitutes a new regulation issued by Decision-making and the Board has not eliminated any regulations.

In summary, the Board has issued a Decision in the *Boeing Co.* case that affects the rights of the Charging Party in the *Caesars Entertainment Corp.* case. Although we do not concede that the footnote effectively vacates the Board Decision, it will certainly be argued by Caesar's Entertainment and may have that impact. The Decision was issued without due process to the Charging Party. This Decision was furthermore issued by a majority consisting of Member Emanuel, who should have recused himself because of his firm's representation of the Boeing Company and because of his firm's representation of Caesar's Entertainment. Finally, the rule was issued without complying with Executive Order No. 13771.

The effort in *Boeing Co.* to reach out and overrule a pending case was a cynical and desperate effort to reverse a decision by the prior Board. For these reasons, the Motion to Intervene should be granted for the purposes of the Board vacating the entire decision in *Boeing Co.*. It must be decided by a panel consisting of members of the Board who may validly consider the issues and excluding members who should be recused. That panel may not include Member Emanuel. The Board may not violate the rights of the Charging Party. In the

alternative, the Board should reconsider and strike any references to *Caesars Entertainment Corp*.

Dated: January 10, 2018

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: */s/ David A. Rosenfeld*
DAVID A. ROSENFELD

Attorneys for Proposed Intervenor ,
INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO

144547\947957

EXHIBIT A

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December 19, 2017

Lawrence D. Levien
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1333 New Hampshire Avenue, NW
Washington, DC 20036

Re: Caesars Entertainment Corp. d/b/a RIO All-Suites Hotel and Casino
Case 28-CA-060841

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jurisdiction over the case at that point. The Board accordingly has no jurisdiction to entertain your motion, and therefore it will not be forwarded to the Board for consideration.

Very truly yours,

/s/ Farah Z. Qureshi
Associate Executive Secretary

cc: Parties
Region

TO
REGION
DAVID ROSENFIELD
CAREN SENCER
MAR RICCIARDI
JOHN MCLACHLAN
LAWRENCE LEVIEN
JOHN KOERNER
ELIZABETH CYR

EXHIBIT B

LexisNexis®

Results for: name(boeing) and counsel(littler) and >2012 and no...

Cases

1. McDonald v. Boeing Co.

United States District Court for the District of Colorado | Jul 09, 2014 | 2014 U.S. Dist. LEXIS 93150

... Alyson Alexis Smith , Erin Ashley Webber , **Littler** Mendelson, PC -Denver, Denver, CO. R. Brooke Jackson , ...
... ERNEST McDONALD, Plaintiff, v. THE **BOEING** COMPANY, Defendant. McDonald v. **Boeing** Co. Civil Action No 13-cv-01703-RBJ United States District Court for ...

2. Anderson v. Boeing Co.

United States District Court for the Eastern District of Pennsylvania | Aug 30, 2016 | 2016 U.S. Dist. LEXIS 191074

... The Boeing Company, Defendant: RACHEL FENDELL SATINSKY , **LITTLER** MENDELSON, P.C. , Philadelphia, PA USA ; RICHARD R. HARRIS, **LITTLER** MENDELSON, Philadelphia, ...
... MILKA A. ANDERSON v. THE **BOEING** COMPANY Anderson v. **Boeing** Co. CIVIL ACTION NO. 15-3073 United States District Court for ...

3. Toy v. Boeing Co.

United States District Court for the Eastern District of Pennsylvania | May 13, 2015 | 2015 U.S. Dist. LEXIS 62559

... RICHARD R. HARRIS, LEAD ATTORNEY, RACHEL FENDELL SATINSKY , **LITTLER** MENDELSON, PHILADELPHIA , PA. KEARNEY , J. KEARNEY ...
... WILLIAM TOY v. THE **BOEING** COMPANY Toy v. **Boeing** Co. CIVIL ACTION NO. 14-3230 United States District Court for ...

4. Barker v. Boeing Co.

United States District Court for the Eastern District of Pennsylvania | May 13, 2014 | 21 F. Supp. 3d 417

... COMPANY, Defendant: RICHARD R. HARRIS, SHELBY REASE SCHWARTZ , **LITTLER** MENDELSON, PHILADELPHIA , PA. L. FELIPE RESTREPO , ...
... ZACHARY BARKER et al. v. THE **BOEING** COMPANY Barker v. **Boeing** Co. CIVIL ACTION No. 12-6684 United States District Court for ...

5. Davis v. Boeing Co.

United States District Court for the Western District of Washington | Oct 29, 2013 | 2013 U.S. Dist. LEXIS 191301

... Rachelle L Wills , Ryan Paul Hammond , **LITTLER** MENDELSON (WA), SEATTLE, WA. For Aetna Insurance Company, Defendant: ...

... PRENTISS B. DAVIS, Plaintiff, v. THE **BOEING** COMPANY, et al., Defendants. Davis v. **Boeing** Co. CASE NO. C11-1033-JCC United States District Court for the ...

6. Steenmeyer v. Boeing Co.

United States District Court for the Western District of Washington | Mar 12, 2015 | 92 F. Supp. 3d 1024

... A Nguyen , Ryan Paul Hammond , LEAD ATTORNEYS, **LITTLER** MENDELSON (WA), SEATTLE , WA. Marsha J. Pechman ...
... AMY STEENMEYER, Plaintiff, v. THE **BOEING** COMPANY, Defendant. Steenmeyer v. **Boeing** Co. CASE NO. C13-2184 MJP United States District Court for ...

7. Davis v. United States

United States Court of Appeals for the Ninth Circuit | May 19, 2015 | 604 Fed. Appx. 565

... Appellant, v. UNITED STATES OF AMERICA, Defendant, and THE **BOEING** COMPANY; AETNA INSURANCE COMPANY, Defendants - Appellees. Davis v. ...
... Hammond , Attorney, Rachelle Lee Wills , Attorney, **Littler** Mendelson, P.C. , Seattle, WA. For AETNA INSURANCE ...

8. Monper v. Boeing Co.

United States District Court for the Western District of Washington | May 13, 2015 | 104 F. Supp. 3d 1170

Overview: In action for fiduciary breach and failure to monitor under ERISA § 502(a)(3), 11 U.S.C.S. § 1132(a)(3), plaintiffs pled facts sufficient to show that members of Employee Benefits Plans Committee failed to take appropriate steps to ensure that ministerial employees provided them with complete and accurate information missing from plan documents.

... Deidra A Nguyen , Ryan Paul Hammond , **LITTLER** MENDELSON (WA), SEATTLE , WA. RICARDO S. MARTINEZ ...
... BRETT A. LYNCH, and MARK C. VETURIS, Plaintiffs, v. THE **BOEING** COMPANY, et al., Defendants. Monper v. **Boeing** Co. Case No. 2:13-cv-01569-RSM...

9. A.A. v. Blue Cross & Blue Shield

United States District Court for the Western District of Washington | Mar 07, 2014 | 2014 U.S. Dist. LEXIS 29986

... of HEALTH CARE SERVICE CORPORATION ILLINOIS STATE PAC, NFP; THE **BOEING** COMPANY MASTER WELFARE PLAN; THE **BOEING** SERVICE CENTER FOR HEALTH AND INSURANCE PLANS; and EMPLOYEE BENEFIT ...
... LEAD ATTORNEY, PRO HAC VICE, **LITTLER** MENDELSON PC , DENVER , CO ; Deidra A Nguyen , **LITTLER** MENDELSON (WA), SEATTLE , ...

10. McDonald v. Boeing Co.

United States Court of Appeals for the Tenth Circuit | Mar 03, 2015 | 602 Fed. Appx. 452

Overview: In this Title VII action, the grant of summary judgment to the employer was affirmed because the employee put forth no evidence that any person with influence over the decision to terminate him made offensive racial comments, approved of such comments, or terminated the employee because such comments were made by others.

... Appellee: Alyson Alexis Smith, Erin Ashley Webber , **Littler** Mendelson, Denver, CO. Before KELLY , BALDOCK , ...
... ERNEST MCDONALD, Plaintiff-Appellant, v. THE **BOEING** COMPANY, Defendant-Appellee. McDonald v. **Boeing** Co. No. 14-1288 United States Court of Appeals for the ...

11. Monper v. Boeing Co.

United States District Court for the Western District of Washington | Apr 28, 2016 | 2016 U.S. Dist. LEXIS 56934

... Kellie Anne Tabor , Ryan Paul Hammond , **LITTLER** MENDELSON (WA), SEATTLE , WA. Does 1-20, as ...
... BRETT A. LYNCH, and MARK C. VETURIS, Plaintiffs, v. THE **BOEING** COMPANY et al., Defendants. Monper v. **Boeing** Co. Case No. C13-1569 RSM...

12. Kelly v. Boeing, Inc.

United States Court of Appeals for the Third Circuit | Feb 04, 2013 | 513 Fed. Appx. 131

Overview: In discrimination suit, where employee refused to sign written settlement agreement, employer's motion to enforce the agreement was properly granted because, inter alia, testimony at the evidentiary hearing clearly showed that he expressly authorized counsel to convey a settlement offer of $225,000 to the employer and that the employer accepted.

... S. CHARLES KELLY, Appellant. v. **BOEING**, INC., also known as **BOEING** HELICOPTER Kelly v. **Boeing**, Inc. No. 11-3475...
... Defendant - Appellee: Nina K. Markey , Esq. , **Littler** Mendelson, Philadelphia , PA. Before: FUENTES , ...

13. Wortman v. Boeing Co.

United States District Court for the District of Oregon, Portland Division | Sep 06, 2016 | 2016 U.S. Dist. LEXIS 119909

... CA ; David P. R. Symes , **Littler** Mendelson, P.C. , Portland , OR. JOHN V. ACOSTA ...
... SIDNEY WORTMAN, Plaintiff, v. THE **BOEING** COMPANY, Defendant. Wortman v. **Boeing** Co. 3:15-cv-01735-AC United States District Court for the District of ...

14. Gulec v. Boeing Co.

United States Court of Appeals for the Ninth Circuit | Oct 03, 2017 | 698 Fed. Appx. 372

... Defendant - Appellee: Steven A. Groode , Attorney, **Littler** Mendelson, P.C. , Los Angeles, CA. For Agusta Westland North ...

... TUGRUL GULEC, Plaintiff-Appellant, v. THE **BOEING** COMPANY; et al., Defendants-Appellees. Gulec v. **Boeing** Co. No. 15-56700 United States Court of Appeals for the ...

15. Vaughan v. Boeing Co.

United States District Court for the Eastern District of Pennsylvania | Jan 19, 2017 | 229 F. Supp. 3d 339

... RACHEL FENDELL SATINSKY , RYAN D. FREEMAN , **LITTLER** MENDELSON, P.C. , PHILADELPHIA, PA; RICHARD R. HARRIS, **LITTLER** MENDELSON, PHILADELPHIA , ...
... THOMAS K. VAUGHAN, JR., Plaintiff, v. THE **BOEING** COMPANY, Defendant. Vaughan v. **Boeing Co. CIVIL ACTION No. 15-4845 United States District Court** for ...

16. Hirsh v. Boeing Health & Welfare Benefit Plan

United States District Court for the Eastern District of Pennsylvania | May 01, 2013 | 2013 U.S. Dist. LEXIS 66390

... JOEL E. HIRSH vs. **BOEING** HEALTH AND WELFARE BENEFIT PLAN, a/k/a THE **BOEING** TRADITIONAL MEDICAL PLAN and **BOEING** EMPLOYEE BENEFITS PLAN COMMITTEE Hirsh v. **Boeing** Health & Welfare Benefit Plan...
... COMMITTEE, Defendants: KIMBERLY J. GOST , LEAD ATTORNEY, **LITTLER** MENDELSON, PHILADELPHIA, PA; NINA MARKEY , **LITTLER** MENDELSON, PC , ...

17. A.A. v. Blue Cross & Blue Shield of Ill.

United States District Court for the Western District of Washington | May 24, 2013 | 2013 U.S. Dist. LEXIS 74045

... of HEALTH CARE SERVICE CORPORATION ILLINOIS STATE PAC, NFP; THE **BOEING** COMPANY MASTER WELFARE PLAN; THE **BOEING** SERVICE CENTER FOR HEALTH AND INSURANCE PLANS; and EMPLOYEE BENEFIT ...
... LEAD ATTORNEY, PRO HAC VICE, **LITTLER** MENDELSON PC , DENVER , CO ; Deidra A Nguyen , **LITTLER** MENDELSON (WA), SEATTLE , ...

18. Anderson v. Boeing Co.

United States Court of Appeals for the Third Circuit | Jun 19, 2017 | 694 Fed. Appx. 84

Overview: A district court's entry of summary judgment in favor of an employer in a discrimination and retaliation case was affirmed since she had not shown that she was either pregnant at or near the time of her termination, and there was no evidence that could give rise to a finding of race or national origin discrimination in the RIF process.

... Philadelphia, PA; Richard R. Harris, Esq., Rachel F. Satinsky, Esq., **Littler** Mendelson, Philadelphia , PA. Before: McKEE , ...
... MILKA A. ANDERSON, Appellant v. THE **BOEING** COMPANY Anderson v. **Boeing** Co. No. 16-3574 United States Court of Appeals for the ...

19. Bennick v. Boeing Co.

United States District Court for the Northern District of Alabama, Northeastern Division | Jul 08, 2013 | 2013 U.S. Dist. LEXIS 94407

... Jay D St Clair , LEAD ATTORNEYS, **LITTLER** MENDELSON PC , Birmingham, AL . C. LYNNWOOD SMITH ...
... MARK E. BENNICK, Plaintiff, vs. THE **BOEING** COMPANY, Defendant. Bennick v. **Boeing** Co. Civil Action No. CV-13-S-1154-NE United States District Court for ...

20. Overby v. Boeing Global Staffing

United States Court of Appeals for the Third Circuit | Jul 08, 2014 | 571 Fed. Appx. 118

... Theodore A. Schroeder , Esq., Zoe B. Tsien, Esq., **Littler** Mendelson, Pittsburgh, PA. For Verifications Inc , Defendant - ...
... ARTHUR R. OVERBY, Appellant v. **BOEING** GLOBAL STAFFING; VERIFICATIONS INC Overby v. **Boeing** Global Staffing No. 14-1683 United States Court of Appeals for ...

21. Anderson v. Boeing Co.

United States District Court for the Eastern District of Pennsylvania | Aug 30, 2016 | 2016 U.S. Dist. LEXIS 191073

... The Boeing Company, Defendant: RACHEL FENDELL SATINSKY , **LITTLER** MENDELSON, P.C. , Philadelphia, PA USA ; RICHARD R. HARRIS, **LITTLER** MENDELSON, Philadelphia, ...
... MILKA A. ANDERSON v. THE **BOEING** COMPANY Anderson v. **Boeing** Co. CIVIL ACTION NO. 15-3073 United States District Court for ...

22. Barker v. Boeing Co.

United States Court of Appeals for the Third Circuit | Jul 14, 2015 | 609 Fed. Appx. 120

... Richard R. Harris, Esq., Rachel F. Satinsky , Esq., **Littler** Mendelson, Philadelphia , PA. Before: SMITH, GREENAWAY , ...
... BARKER; FRANCIS X. BOYD, JR.; DAVID W. SMITH v. THE **BOEING** COMPANY, Francis X. Boyd, Jr. and David W. Smith, Appellants Barker v. **Boeing** Co. No. 14-3009...

23. Wortman v. Boeing Co.

United States District Court for the District of Oregon, Portland Division | May 16, 2016 | 2016 U.S. Dist. LEXIS 65335

... CA ; David P. R. Symes , **Littler** Mendelson, P.C. , Portland , OR. JOHN V. ACOSTA ...
... SIDNEY WORTMAN, Plaintiff, v. THE **BOEING** COMPANY, Defendant. Wortman v. **Boeing** Co. 3:15-cv-1735-AC United States District Court for the District of ...

EXHIBIT C

LexisNexis

Results for: **name(Caesars Entertainment or Rio All-Suites Hotel...**

Cases

1. United States EEOC v. Caesars Entm't

United States District Court for the District of Nevada | Apr 23, 2006 | 2006 U.S. Dist. LEXIS 26897

... U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff v. **CAESARS ENTERTAINMENT**, INCORPORATED, a Delaware Corporation, PARK PLACE **ENTERTAINMENT** CORPORATION, a Delaware Corporation and DOES 1-10, inclusive, Defendants; ELINA ...
... JESSICA ALVARADO PANAMENO, TANGE JOHNSON and CANDELARIA TURCIOS, Plaintiffs/Intervenors v. **CAESARS ENTERTAINMENT**, INCORPORATED, a Delaware Corporation, PARK PLACE **ENTERTAINMENT** CORPORATION, a Delaware Corporation; DESERT PALACE INC., a Nevada Corporation, dba **CAESARS** PALACE; JUAN GONZALEZ; DANIEL PINELO; RICARDO HERNANDEZ; and DOES 1-10 inclusive, Defendants United States EEOC v. **Caesars** Entm't...
... Entertainment Corporation , Defendant: Patrick H. Hicks , **Littler** Mendelson, PC , Las Vegas, NV; Veronica A. Arechederra-Hall, **Littler** Mendelson, PC , Las Vegas, NV...
... Caesars Entertainment, Inc., Defendant: Patrick H. Hicks , **Littler** Mendelson, PC , Las Vegas, NV; Veronica A. Arechederra-Hall, **Littler** Mendelson, PC , Las Vegas, NV...

2. Mares v. Caesars Entm't, Inc.

United States District Court for the Southern District of Indiana, New Albany Division | Jan 10, 2007 | 2007 U.S. Dist. LEXIS 2539

... GUADALUPE (ROBERT) MARES, Plaintiff, vs. **CAESARS ENTERTAINMENT**, INC., HARRAH'S **ENTERTAINMENT**, INC., HARRAH'S OPERATING COMPANY, INC., **CAESARS** WORLD INC., ROMAN **ENTERTAINMENT** CORPORATION OF FLORIDA, **CAESARS** RIVERBOAT CASINO, LLC, f/k/a RDI/**CAESARS** RIVERBOAT CASINO, LLC f/k/a HARCO **ENTERTAINMENT** COMPANY, LLC, Defendants. Mares v. **Caesars** Entm't, Inc. 4:06-cv-0060-JDT-WGH ...
... Rick D. Roskelley , **LITTLER** MENDELSON , Las Vegas , NV ; Todd M. Nierman , **LITTLER** MENDELSON PC , Indianapolis, IN. ...
... COMPANY, LLC , Defendants: Dustin D. Stohler , **LITTLER** MENDELSON PC , Indianapolis, IN; Rick D. Roskelley , **LITTLER** MENDELSON , ...

3. United States EEOC v. Caesars Entm't, Inc

United States District Court for the District of Nevada | Aug 16, 2006 | 237 F.R.D. 428

Overview: When information regarding a corporate employer's factual bases for its position statements in a sex discrimination action was discoverable by written interrogatories and not protected by the attorney-client privilege or the work product doctrine, then the same information was discoverable by an oral deposition under Fed. R. Civ. P. 30(b)(6).

... U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, vs. **CAESARS ENTERTAINMENT**, INC, et al., Defendants, and ELINA MASID, et al., Plaintiff-Intervenors. United States EEOC v. **Caesars** Entm't, Inc...

... Veronica A. Arechederra-Hall , **Littler** Mendelson, PC , Las Vegas, NV. For Desert Palace, Inc, Defendant: Deborah L. Westbrook , **Littler** Mendelson, Las Vegas, NV. For Juan Gonzalez, Defendant: ... ... Place Entertainment Corporation , Defendants: Deborah L. Westbrook , **Littler** Mendelson, Las Vegas, NV.; Patrick H. Hicks , Veronica A. Arechederra-Hall , **Littler** Mendelson, PC...

4. U.S. EEOC v. Caesars Entm't, Inc.

United States District Court for the District of Nevada | Apr 25, 2007 | 2007 U.S. Dist. LEXIS 30365

... U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. **CAESARS ENTERTAINMENT**, INCORPORATED, a Delaware Corporation, PARK PLACE **ENTERTAINMENT** CORPORATION, a Delaware Corporation and DOES 1-10, inclusive, Defendants. ELINA ... ... JESSICA ALVARADO PANAMENO, TANGE JOHNSON and CANDELARIA TURCIOS, Plaintiffs/Intervenors, v. **CAESARS ENTERTAINMENT**, INCORPORATED, a Delaware Corporation, PARK PLACE **ENTERTAINMENT** CORPORATION, a Delaware Corporation; DESERT PALACE INC., a Nevada Corporation, dba **CAESARS** PALACE; JUAN GONZALEZ; DANIEL PINELO; RICARDO HERNANDEZ; and DOES 1-10 inclusive, Defendants. U.S. EEOC v. **Caesars** Entm't, Inc.... ... Inc. , Defendants: Deborah L. Westbrook , LEAD ATTORNEY, **Littler** Mendelson, Las Vegas, NV; Veronica A. Arechederra-Hall , **Littler** Mendelson, PC , Las Vegas, NV. For Juan Gonzalez, Defendant: ... ... Entertainment Corporation, Defendants: Deborah L. Westbrook , LEAD ATTORNEY, **Littler** Mendelson, Las Vegas, NV; Patrick H. Hicks , LEAD ...

5. Bravo v. Caesars Entm't Corp.

United States District Court for the District of Nevada | Dec 17, 2014 | 2014 U.S. Dist. LEXIS 174763

... GREGORIO BRAVO, Plaintiff(s), v. **CAESARS ENTERTAINMENT** CORPORATION dba **CAESARS** PALACE, Defendant(s). Bravo v. **Caesars Entm't** Corp. Case No. 2:14-CV-1616 JCM (CWH) United States District Court ...
... Defendant: Patrick H. Hicks , LEAD ATTORNEY, **Littler** Mendelson, PC , Las Vegas, NV; Rachel Silverstein, LEAD ATTORNEY, **Littler** Mendelson , ...

6. Kurtz v. Caesars Entm't, Inc.

United States Court of Appeals for the Ninth Circuit | Feb 14, 2008 | 266 Fed. Appx. 676

Overview: Where there was no indication that a former employee's supervisor or anyone else in the company had ever sexually harassed the former employee, and she never expressed any concern about unwanted sexual advances, there was no factual basis on which her supervisor could have perceived that the employee was engaged in protected activity.

... MARGARET KURTZ, Plaintiff - Appellant, v. **CAESARS ENTERTAINMENT**, INC.; PARK PLACE **ENTERTAINMENT** CORP., Defendants - Appellees. Kurtz v. **Caesars** Entm't, Inc. No. 06-15844... ... II , Esq. , Wendy Krincek , Esq. , **LITTLER** MENDELSON, PC, Las Vegas , NV . PARK ...

7. State ex rel. Tivol Plaza, Inc. v. Mo. Comm'n on Human Rights

Supreme Court of Missouri | Aug 22, 2017 | 527 S.W.3d 837

Overview: Mo. Rev. Stat. § 213.111.1 required Missouri Commission on Human Rights (MCHR) to issue right-to-sue letter and terminate proceedings related to complaint if 180 days had elapsed and employee had made written request for right-to-sue letter, which happened. MCHR lost authority to continue processing charges and was required to issue letters.

... RIGHTS, ET AL., Respondents. and STATE OF MISSOURI EX REL. **CAESARS ENTERTAINMENT** OPERATING CO., INC., ET AL., Appellants, v. MISSOURI COMMISSION ON ...
... SC95759, Caesars was represented by Sarah J. Preuss of **Littler** Mendelson PC in Kansas City. In SC95759, the commission ...

EXHIBIT D

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Attorneys for THE COMMITTEE TO PRESERVE THE RELIGIOUS RIGHT TO ORGANIZE

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

In Re Recusal of William Emanuel The Committee to Preserve the Religious Right to Organize	**IN RE RECUSAL OF WILLIAM EMANUEL**

The Committee to Preserve the Religious Right to Organize, a person, requests that the Board issue an Order that William J. Emanuel be recused from considering any Board matters until the Littler Mendelson law firm and the Jones Day law firm submit complete lists of their clients so that the Board, Member Emanuel, and the public can determine whether it is necessary that Member Emanuel recuse himself from considering certain cases before the Board.

This request requires urgent consideration. Otherwise, there is a serious risk that Member Emanuel will consider cases in violation of ethics rules.

1. The Committee to Preserve the Religious Right to Organize is a person. *See Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010). It is also a Charging Party before the Board. The Committee consists of various individuals and organizations including employees or former employees within the meaning of the Act.

2. The Committee has participated in National Labor Relations Board proceedings. *See, e.g., The Committee to Preserve the Religious Right to Organize v. National Labor Relations Board*, Case No. 16-2297 (Seventh Cir.) on Petition for Review and Cross-Petition for Enforcement from *Hobby Lobby Stores, Inc.*, 363 NLRB No. 195 (2016) (the Committee as Charging Party); Hobby Lobby Stores, Inc., Case 20-CA-162492 (Committee was the Charging Party), and currently The Trump Corporation, Case 02-CA-183801 and Trump Vineyard Estates, Case 05-CA-190783 (case closed in 2017). There is no doubt that the Committee is not only a person but is a proper Charging Party before the Board.

3. It is undisputed that Member Emanuel was a shareholder at Littler Mendelson for many years before he took his seat on the Board. He was also previously a shareholder at the Jones Day law firm.

4. According to the submissions that Member Emanuel made on OGE Form 278e, he received substantial income from named clients of Littler Mendelson. Although he has not received any income recently from representation of clients while working for the Jones Day law firm, at least as disclosed on the form, he remains a participant in the Jones Day Qualified Defined Benefit Plan. *See* Exhibit A.

5. Recently, 12 Senators signed a letter, which was forwarded to Member Emanuel, asking that he take appropriate action to recuse himself from cases regarding any former clients. *See* Exhibit B. That letter specifically requests as follows:

> Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.

The Senators properly requested Member Emanuel to recuse himself from all cases pending before the Board involving clients that he claims to have directly represented. *See* Executive Order 13770(1)(6); 5 Code of Federal Regulations §§ 2635.101 and 2635.502; 18 U.S.C. § 208.

6. However, Member Emanuel has failed to comply with the Senators' request. The list attached to Member Emanuel's OGE Form 278e only contains clients that he claims to have generated a substantial income. Member Emanuel is unclear as to whether he personally earned the income or his law firm earned the income while representing these clients. The Littler Mendelson firm is the nation's largest employment firm. It has offices in 75 locations in the United States and abroad and advertises on its website that it has 1,300 attorneys. *See* https://www.littler.com/about-littler. Consequently, Littler Mendelson must have thousands of paying clients (and perhaps even a very few non-paying clients). Many of these clients cannot be found by searching the NLRB's website or any public records. As a shareholder of Littler Mendelson, Member Emanuel would have had a financial interest related to any client represented by the firm, save the unlikely case where the client paid no legal fees.

7. The list attached to Member Emanuel's OGE Form 278e omits most clients of his law firm. Most likely, Member Emanuel has failed to disclose thousands of clients that generated income for Littler Mendelson and, by extrapolation, for shareholder Member Emanuel himself. Thus, under the ethics rules, he must recuse himself from any case before the Board involving a party that Littler Mendelson represented at any point during the last three years. *See*

Executive Order 13770(1)(6); 5 Code of Federal Regulations §§ 2635.101 and 2635.502; 18 U.S.C. § 208.

8. Given the vast size of Littler Mendelson, Member Emanuel likely does not know or remember all the clients represented by the firm. The Members of the Board do not know those clients and consequently cannot ensure Member Emanuel's recusal in all appropriate cases. The parties also do not know those clients and cannot request recusal based on conflict of interest. The public also does not know those clients. Thus, the integrity of the Board is compromised by a potential conflict of interest if Member Emanuel decides any cases without the disclosure of all clients represented by Littler Mendelson in the last two years.

9. To ensure transparency and complete compliance with the ethics rules, Member Emanuel must recuse himself from all cases until Littler Mendelson provides a public document listing all of its clients. Only then can the public, Member Emanuel, other Members of the Board, General Counsel and the parties make informed requests for recusal in appropriate cases.

10. It would not be sufficient for Littler Mendelson to provide a list of clients that it believes are before the Board. There are cases in many stages of litigation, including before Administrative Law Judges, where interim motions, special appeals or other proceedings come before the Board. The same is true of representation cases. Littler Mendelson may not know that a representation case is on-going with a client if that client or former client is using another lawyer or no lawyer. Such cases may come before the Board without any notice. Thus, to ensure complete transparency, Littler Mendelson should provide a complete public list of all clients that it represented in the last two years dated from when Member Emanuel was sworn in.

11. Similarly, the Jones Day firm must produce a public list of its clients during the last two years. That list can assure the public, as well as other Members of the Board and the

parties to litigation, that Member Emanuel will recuse himself from any case that involves a client of Jones Day. That list must also include all clients which it may have represented at any time during Member Emanuel's association with the firm which have cases pending before the Board.

12. Members of the National Labor Relations Board are executive branch employees bound by two sets of ethical standards: the Standards of Ethical Conduct for Employees of the Executive Branch established in Title 5 of the Code of Federal Regulations, and the Ethics Commitments by Executive Branch Appointees set forth by Executive Order 13770. Executive branch employees are also regulated by certain restrictions found in 18 U.S.C. § 208.

13. The Code of Federal Regulations ("Code") prohibits government employees from acting partially towards a private organization or individual, 5 C.F.R. § 2635.101(b)(8), and requires government employees to "endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part." *Id.* § 2635.101(b)(14). An employee "should not participate" in any matter where the employee was employed by one of the parties within the last year, or where "the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter," unless a designated agency official is informed of the appearance problem and gives his or her authorization. *Id.* § 2645.502.

14. Here, Member Emanuel is likely to act partially toward a party before the Board that was represented by his former law firms. Member Emanuel worked for many years in the law firms. He is likely to have a bias, perhaps a subconscious one, toward any client of the firms. Any ruling favoring a former client of either law firm "creat[es] the appearance that [Member Emanuel is] violating the law or . . . ethical standards." Consequently, "a reasonable

person with knowledge of the relevant facts" would question Member Emanuel's impartiality in deciding cases where a party has generated substantial income for Member Emanuel when he was a shareholder of Littler Mendelson or Jones Day.

15. Executive Order 13770 ("Executive Order") prohibits executive branch employees, for a period of two years from the date of appointment, from "participat[ing] in any particular matter involving specific parties that is directly and substantially related to [her or his] former employer or former clients. . . ." Ex. Order 13770, 82 Fed. Reg. 9333 (Jan. 28, 2017). A matter is "[d]irectly and substantially related" if "the appointee's former employer or a former client is a party or represents a party." *Id.* "Former client"[1] includes persons whom the "appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment," and "former employer" is any person "for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner." *Id.* The Code imposes the same restriction for a one-year period.

16. Here, Member Emanuel was a shareholder and employee of Littler Mendelson prior to his appointment to the Board. Any client that has been represented by Littler Mendelson in the last two years is "directly and substantially related" to Member Emanuel's former employer. Thus, Member Emanuel should not participate in any case involving a current or former Littler Mendelson client.

17. Under 18 U.S.C. § 208, every officer and employee of the executive branch and

[1] "'Former client' . . . does not include clients of the appointee's former employer to whom the appointee did not personally provide services." Ex. Order 13770, 82 Fed. Reg. 9333 (Jan. 28, 2017). This provision must be read to apply only to associates of law firms. Shareholders pool their resources and profits. Thus, each shareholder, regardless of her function at the firm, is personally responsible for providing services to the client and personally benefits financially from the client's legal fees.

any independent agency of the United States is forbidden from participating "in a judicial or other proceeding, application, request for a ruling or other determination, [when] … to his knowledge, he … has a financial interest" in the matter, unless the officer or employee has advised the government official responsible for his or her appointment of "the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination[,] … makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee." 18 U.S.C. § 208. To constitute a violation, the matter must have a "direct and predictable effect" on the financial interest at issue, meaning there must be a "close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest." 5 C.F.R. § 2635.402.

18. Here, Member Emanuel has a "close causal link between any decision" involving a current or former Jones Day employee and the "expected effect of the matter on [Member Emanuel's] financial interest." As noted, Member Emanuel participates in Jones Day's Qualified Defined Benefit Plan. He has a financial interest in the solvency of the Jones Day law firm. Thus, Member Emanuel cannot hear any matter where the client is represented by Jones Day.

19. The 12 Senators are correct that Member Emanuel must recuse himself as required by his ethical obligations. It is also clear that he must recuse himself from any case in which his former firms, Littler Mendelson and Jones Day, represented a client in any case or matter or performed any services.

20. Littler Mendelson and Jones Day represented many clients in matters which are not made public through court or other filings. They have presumably thousands of clients with whom they have established attorney client relationships. They must be disclosed because the public, the parties, other Board members and Member Emanuel himself do not know the identity of these clients.

21. For example, this is reflected in Verizon Wireless and Communication Workers of America, AFL-CIO, et al., Cases 02-CA-157403, 02-CA-156761, 04-CA-156043, 05-CA-156053, 31-CA-161472. In that case, the Jones Day law firm represents Verizon. Member Emanuel must recuse himself from that case. Additionally, Verizon has used Littler Mendelson during the last three years to represent it in other cases. This is an alternative ground for Member Emanuel to recuse himself. *See* Exhibit C (listing known Verizon cases where the Littler Mendelson firm was retained). It is likely that there are many similar instances that are unknown because there are no public lists of Littler Mendelson' or Jones Days' clients.

22. This motion is urgent. The Board reviews and decides cases on a daily basis, including representation matters requiring quick decisions by the Board. There are numerous Board cases that are pending. Motions and Interim Appeals are filed daily. Only if Member Emanuel immediately recuses himself from all cases can the ethics requirements be fully satisfied. Member Emanuel should voluntarily recuse himself until these matters are resolved. Alternatively, the Board should order that Member Emanuel be recused from all cases until these matters are resolved. Any failure of Member Emanuel to recuse himself should be referred to the Ethics Officer and the Inspector General.

Dated: November 20, 2017

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: */s/ David A. Rosenfeld*
David A. Rosenfeld

Attorneys for THE COMMITTEE TO PRESERVE THE RELIGIOUS RIGHT TO ORGANIZE

144310\943274

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On November 20, 2017, I served the following documents in the manner described below:

IN RE RECUSAL OF WILLIAM EMANUEL

☑ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kkempler@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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Washington, D.C. 20570-0001
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☑ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by United Parcel Service for overnight delivery.

Gary Shinners
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 20, 2017, at Alameda, California.

/s/ Karen Kempler
Karen Kempler

EXHIBIT A

June 30, 2017

Lori W. Ketcham
Associate General Counsel, Ethics
Designated Agency Ethics Official
National Labor Relations Board
1015 Half Street S.E.
Washington, D.C. 20570

Dear Ms. Ketcham:

The purpose of this letter is to describe the steps I will take to avoid any actual or apparent conflict of interest if I am confirmed as a Board Member of the National Labor Relations Board.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position with the law firm of Little Mendelson PC. I currently have a capital account with the firm, and I will receive a refund of that account within 3 years of my resignation. Additionally, when I resign from the firm, a fixed amount will be established to cover any funds owed to me under the firm's salary hold back policy. This fixed payment will cover compensation earned, but withheld, prior to my confirmation. I will receive that fixed amount in early 2018. Until I receive the refund of my capital account and the fixed hold back payment, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the ability or willingness of the firm to pay these obligations, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1). For a period of one year after my resignation, I also will not participate personally and substantially in any particular matter involving specific parties in which I know the firm is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party, for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I was previously employed by the Jones Day law firm. I am a participant in Jones Day's Qualified Defined Benefit Plan. Because I will continue to participate in this plan, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the ability or willingness of Jones Day to provide

this contractual benefit to me, unless I first obtain a written waiver under 18 USC 208(b)(1), or qualify for a regulatory exemption under 18 USC 208(b)(2).

Upon confirmation, I will resign from my position with the Wine and Food Society of Southern California, Inc. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know the Wine and Food Society of Southern California, Inc. is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I will retain my position as a trustee of the Emanuel Family Trust. I will not receive any fees for the services that I provide as a trustee during my appointment to the position of Board Member. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of the Emanuel Family Trust, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I understand that as an appointee I am required to sign the Ethics Pledge (Executive Order No. 13770) and that I will be bound by the requirements and restrictions therein, in addition to the commitments I have made in this and any other ethics agreement.

I will meet in person with you during the first week of my service in the position of Board Member in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

Finally, I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

William J Emanuel

William Emanuel

Nominee Report | U.S. Office of Government Ethics; 5 C.F.R. part 2634 | Form Approved: OMB No. (3209-0001) (March 2014)

Executive Branch Personnel
Public Financial Disclosure Report (OGE Form 278e)

Filer's Information

Emanuel, William Joesph

Member, National Labor Relations Board

Other Federal Government Positions Held During the Preceding 12 Months:
None

Names of Congressional Committees Considering Nomination:

- **Committee on Health, Education, Labor, and Pensions**

Electronic Signature - I certify that the statements I have made in this form are true, complete and correct to the best of my knowledge.

/s/ Emanuel, William Joesph [electronically signed on 05/02/2017 by Emanuel, William Joesph in Integrity.gov]

Agency Ethics Official's Opinion - On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments below).
/s/ Ketcham, Lori W, Certifying Official [electronically signed on 07/03/2017 by Ketcham, Lori W in Integrity.gov]

Other review conducted by
/s/ Gilman, Joseph S, Ethics Official [electronically signed on 07/03/2017 by Gilman, Joseph S in Integrity.gov]

U.S. Office of Government Ethics Certification
/s/ Apol, David, Certifying Official [electronically signed on 07/05/2017 by Apol, David in Integrity.gov]

1. Filer's Positions Held Outside United States Government

#	ORGANIZATION NAME	CITY, STATE	ORGANIZATION TYPE	POSITION HELD	FROM	TO
1	Littler Mendelson PC	Los Angeles, California	Law Firm	Shareholder	7/2004	Present
2	Wine and Food Society of Southern California, Inc.	Los Angeles, California	Non-Profit	Board of Directors	6/2011	Present
3	Emanuel Family Trust	Los Angeles, California	Trust	Trustee	9/2007	Present

2. Filer's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Littler Mendelson PC (law firm)	N/A		Salary	$417,770
2	Littler Mendelson PC capital account	N/A	$50,001 - $100,000		None (or less than $201)
3	Littler Mendelson 401(k) Plan	No			
3.1	MFS Total Return R3 Fund	Yes	$500,001 - $1,000,000		$15,001 - $50,000
4	Wells Fargo IRA	No			
4.1	BlackRock Liquidity Funds T-Fund Institutional Shares Fund	Yes	$15,001 - $50,000		$5,001 - $15,000
4.2	Dodge and Cox Income Fund	Yes	$250,001 - $500,000		$5,001 - $15,000
4.3	T. Rowe Price Short-Term Bond Fund	Yes	$50,001 - $100,000		$1,001 - $2,500
4.4	Metropolitan West Total Return Bond Fund Class I	Yes	$250,001 - $500,000		$2,501 - $5,000
4.5	Eaton Vance Floating Rate Fund	Yes	$50,001 - $100,000		$1,001 - $2,500

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
4.6	PIMCO High Yield Fund INST	Yes	$50,001 - $100,000		$2,501 - $5,000
4.7	Harbor Capital Appreciation Instl Fund	Yes	$100,001 - $250,000		$201 - $1,000
4.8	MFS Value Fund - Class I	Yes	$100,001 - $250,000		$2,501 - $5,000
4.9	Vanguard 500 Index Fund Admiral	Yes	$100,001 - $250,000		$2,501 - $5,000
4.10	Principal MidCap Institutional Fund	Yes	$100,001 - $250,000		$201 - $1,000
4.11	Undiscovered Managers Behavioral Value Fund - L	Yes	$50,001 - $100,000		$201 - $1,000
4.12	Dodge & Cox International Stock Fund	Yes	$100,001 - $250,000		$2,501 - $5,000
4.13	Harbor International Fund Institutional Shares	Yes	$100,001 - $250,000		$1,001 - $2,500
4.14	T. Rowe Price Instl Emerging Mkts Eq	Yes	$50,001 - $100,000		$201 - $1,000
4.15	Cohen & Steers Instl Realty Shares	Yes	$100,001 - $250,000		$5,001 - $15,000
4.16	Fidelity Advisor International Real Estate Fund	Yes	$15,001 - $50,000		$201 - $1,000
4.17	Driehaus Active Income Fund	Yes	$100,001 - $250,000		$2,501 - $5,000
4.18	Eaton Vance Global Macro Absolute Return Advantage Fund	Yes	$50,001 - $100,000		$1,001 - $2,500
4.19	ASG Global Alternatives Y	Yes	$15,001 - $50,000		None (or less than $201)
5	Jones Day Qualified Defined Benefit Plan (value not readily ascertainable)	N/A		Retirement Payments (Annual)	$15,500
6	Littler Mendelson PC Anticipated Hold Back Payment	N/A	$15,001 - $50,000		None (or less than $201)

3. Filer's Employment Agreements and Arrangements

#	EMPLOYER OR PARTY	CITY, STATE	STATUS AND TERMS	DATE
1	Littler Mendelson PC - Capital Account	Los Angeles, California	Pursuant to the terms of the agreement with the firm, when filer leaves the firm, his capital account will be paid back over the course of 3 years (or possibly sooner). The balance of the capital account is already established.	7/2004
2	Jones Day Qualified Defined Benefit Plan	Los Angeles, California	I will continue to participate in this defined benefit plan.	1/1998
3	Littler Mendelson 401(k) Plan	Los Angeles, California	I will continue to participate in this defined contribution plan. The plan sponsor will not make further contributions after my separation.	7/2004
4	Littler Mendelson PC	Los Angeles, California	When the filer leaves the firm a fixed amount will be established to cover any funds owed to him under the firm's salary hold back. That fixed amount will be paid to the filer shortly after the end of 2017.	5/2017

4. Filer's Sources of Compensation Exceeding $5,000 in a Year

#	SOURCE NAME	CITY, STATE	BRIEF DESCRIPTION OF DUTIES
1	Littler Mendelson PC	Los Angeles, California	Legal Services
2	Amtrust Financial Services, Inc.	New York, New York	Legal Services
3	Atlas Air, Inc.	Purchase, New York	Legal Services
4	Automatic Labs, Inc.	San Francisco, California	Legal Services
5	Banker's Toolbox	Austin, Texas	Legal Services
6	BDI Insulation	Bakersfield, California	Legal Services

#	SOURCE NAME	CITY, STATE	BRIEF DESCRIPTION OF DUTIES
7	Bio-Reference Laboratories Inc.	Elmwood Park, New Jersey	Legal Services
8	BMC Stock Holdings Inc.	Atlanta, Georgia	Legal Services
9	CBRE	Los Angeles, California	Legal Services
10	Cipriani USA Inc	New York, New York	Legal Services
11	Community Bank	Syracuse, New York	Legal Services
12	Consolidated Equipment Group, LLC	Alexandria, Minnesota	Legal Services
13	Emcor Group Inc	Norwalk, Connecticut	Legal Services
14	Encore Capital Group	San Diego, California	Legal Services
15	Enterprise Products Partners L.P.	Houston, Texas	Legal Services
16	FedEx Freight	Harrison, Arizona	Legal Services
17	Genesis HealthCare	Lake Forest, California	Legal Services
18	Haggen Inc	Bellingham, Washington	Legal Services
19	Handy	New York, New York	Legal Services
20	ICON Aircraft	Vacaville, California	Legal Services
21	Internet Brands, Inc.	El Segundo, California	Legal Services
22	Irell & Manella LLP	Los Angeles, California	Legal Services
23	JPMorgan Chase Bank, N.A.	New York, New York	Legal Services

#	SOURCE NAME	CITY, STATE	BRIEF DESCRIPTION OF DUTIES
24	KDN Management Inc	Los Angeles, California	Legal Services
25	L&R Group of Companies	Los Angeles, California	Legal Services
26	La Quinta Car Wash	La Quinta, California	Legal Services
27	Los Angeles Unified School District	Los Angeles, California	Legal Services
28	M&T Bank	Buffalo, New York	Legal Services
29	MasTec, Inc.	Coral Gables, Florida	Legal Services
30	MiaSolé Hi-Tech Corp.	Santa Clara, California	Legal Services
31	National Freight Inc	Cherry Hill, New Jersey	Legal Services
32	Nissan North America, Inc.	Canton, Mississippi	Legal Services
33	Pacific Steel Casting Company LLC	Berkeley, California	Legal Services
34	Panda Restaurant Group, Inc.	Rosemead, California	Legal Services
35	PPG Industries, Inc.	Pittsburgh, Pennsylvania	Legal Services
36	Red Lobster	Orlando, Florida	Legal Services
37	Rite Aid Corporation	Camp Hill, Pennsylvania	Legal Services
38	Rural/Metro Corporation	Scottsdale, Arizona	Legal Services
39	Safeway Inc.	Pleasanton, California	Legal Services
40	The Salvation Army	Los Angeles, California	Legal Services

#	SOURCE NAME	CITY, STATE	BRIEF DESCRIPTION OF DUTIES
41	Seacastle Inc.	Walnut Creek, California	Legal Services
42	Securitas Security Services USA, Inc	Los Angeles, California	Legal Services
43	Serta Simmons Bedding, LLC	Atlanta, Georgia	Legal Services
44	Staples, Inc.	Framingham, Massachusetts	Legal Services
45	Sugarfina	Los Angeles, California	Legal Services
46	Toshiba America Energy Systems Corp.	Charlotte, North Carolina	Legal Services
47	Uber Technologies, Inc.	San Francisco, California	Legal Services
48	Vision Express / Wrag-Time	Gardena, California	Legal Services
49	Wilshire West, LLC	Beverly Hills, California	Legal Services

5. Spouse's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	SEP IRA	N/A	$50,001 - $100,000	SEP IRA	$2,790
1.1	iShares Russell 2000 ETF	Yes	$1,001 - $15,000		None (or less than $201)
1.2	iShares Russell 1000 ETF	Yes	$15,001 - $50,000		$201 - $1,000
1.3	iShares 7-10 Year Treasury Bond ETF	Yes	$15,001 - $50,000		$201 - $1,000
1.4	iShares 1-3 Year Treasury Bond ETF	Yes	$1,001 - $15,000		None (or less than $201)

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1.5	iShares 20+ Year Treasury Bond	Yes	$1,001 - $15,000		None (or less than $201)
1.6	iShares MSCI Emerging Markets	Yes	$1,001 - $15,000		None (or less than $201)
1.7	iShares MCSI EAFE Index	Yes	$1,001 - $15,000		None (or less than $201)
1.8	iShares Russell Midcap	Yes	$1,001 - $15,000		None (or less than $201)

6. Other Assets and Income

#	DESCRIPTION		EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	602 Santa Monica Partners LP	See Endnote	No	$1,001 - $15,000	Limited partnership distribution	$2,676
2	U.S. Checking account (cash)		N/A	$15,001 - $50,000	Interest	None (or less than $201)

7. Transactions

(N/A) - Not required for this type of report

8. Liabilities

#	CREDITOR NAME	TYPE	AMOUNT	YEAR INCURRED	RATE	TERM
1	Wells Fargo	Mortgage on Personal Residence	$500,001 - $1,000,000	2016	3.25	30 Year

9. Gifts and Travel Reimbursements

(N/A) - Not required for this type of report

Endnotes

PART	#	ENDNOTE
6.	1	This represents the filer's ownership interest in a small restaurant.

Summary of Contents

1. Filer's Positions Held Outside United States Government

Part 1 discloses positions that the filer held at any time during the reporting period (excluding positions with the United States Government). Positions are reportable even if the filer did not receive compensation.

This section does not include the following: (1) positions with religious, social, fraternal, or political organizations; (2) positions solely of an honorary nature; (3) positions held as part of the filer's official duties with the United States Government; (4) mere membership in an organization; and (5) passive investment interests as a limited partner or non-managing member of a limited liability company.

2. Filer's Employment Assets & Income and Retirement Accounts

Part 2 discloses the following:

- Sources of earned and other non-investment income of the filer totaling more than $200 during the reporting period (e.g., salary, fees, partnership share, honoraria, scholarships, and prizes)
- Assets related to the filer's business, employment, or other income-generating activities that (1) ended the reporting period with a value greater than $1,000 or (2) produced more than $200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is $0 - $200 or if the asset qualifies as an excepted investment fund (EIF).

3. Filer's Employment Agreements and Arrangements

Part 3 discloses agreements or arrangements that the filer had during the reporting period with an employer or former employer (except the United States Government), such as the following:

- Future employment
- Leave of absence
- Continuing payments from an employer, including severance and payments not yet received for previous work (excluding ordinary salary from a current employer)
- Continuing participation in an employee welfare, retirement, or other benefit plan, such as pensions or a deferred compensation plan
- Retention or disposition of employer-awarded equity, sharing in profits or carried interests (e.g., vested and unvested stock options, restricted stock, future share of a company's profits, etc.)

4. Filer's Sources of Compensation Exceeding $5,000 in a Year

Part 4 discloses sources (except the United States Government) that paid more than $5,000 in a calendar year for the filer's services during any year of the reporting period.

The filer discloses payments both from employers and from any clients to whom the filer personally provided services. The filer discloses a source even if the source made its payment to the filer's employer and not to the filer. The filer does not disclose a client's payment to the filer's employer if the filer did not provide the services for which the client is paying.

5. Spouse's Employment Assets & Income and Retirement Accounts

Part 5 discloses the following:

- Sources of earned income (excluding honoraria) for the filer's spouse totaling more than $1,000 during the reporting period (e.g., salary, consulting fees, and partnership share)
- Sources of honoraria for the filer's spouse greater than $200 during the reporting period
- Assets related to the filer's spouse's employment, business activities, other income-generating activities that (1) ended the reporting period with a value greater than $1,000 or (2) produced more than $200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's spouse's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is $0 - $200 or if the asset qualifies as an excepted investment fund (EIF). Amounts of income are not required for a spouse's earned income (excluding honoraria).

6. Other Assets and Income

Part 6 discloses each asset, not already reported, that (1) ended the reporting period with a value greater than $1,000 or (2) produced more than $200 in investment income during the reporting period. For purposes of the value and income thresholds, the filer aggregates the filer's interests with those of the filer's spouse and dependent children.

This section does not include the following types of assets: (1) a personal residence (unless it was rented out during the reporting period); (2) income or retirement benefits associated with United States Government employment (e.g., Thrift Savings Plan); and (3) cash accounts (e.g., checking, savings, money market accounts) at a single financial institution with a value of $5,000 or less (unless more than $200 of income was produced). Additional exceptions apply. Note: The type of income is not required if the amount of income is $0 - $200 or if the asset qualifies as an excepted investment fund (EIF).

7. Transactions

Part 7 discloses purchases, sales, or exchanges of real property or securities in excess of $1,000 made on behalf of the filer, the filer's spouse or dependent child during reporting period.

This section does not include transactions that concern the following: (1) a personal residence, unless rented out; (2) cash accounts (e.g., checking, savings, CDs, money market accounts) and money market mutual funds; (3) Treasury bills, bonds, and notes; and (4) holdings within a federal Thrift Savings Plan account. Additional exceptions apply.

8. Liabilities

Part 8 discloses liabilities over $10,000 that the filer, the filer's spouse or dependent child owed at any time during the reporting period.

This section does not include the following types of liabilities: (1) mortgages on a personal residence, unless rented out (limitations apply for PAS filers); (2) loans secured by a personal motor vehicle, household furniture, or appliances, unless the loan exceeds the item's purchase price; and (3) revolving charge accounts, such as credit card balances, if the outstanding liability did not exceed $10,000 at the end of the reporting period. Additional exceptions apply.

9. Gifts and Travel Reimbursements

This section discloses:

- Gifts totaling more than $375 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.
- Travel reimbursements totaling more than $375 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.

For purposes of this section, the filer need not aggregate any gift or travel reimbursement with a value of $150 or less. Regardless of the value, this section does not include the following items: (1) anything received from relatives; (2) anything received from the United States Government or from the District of Columbia, state, or local governments; (3) bequests and other forms of inheritance; (4) gifts and travel reimbursements given to the filer's agency in connection with the filer's official travel; (5) gifts of hospitality (food, lodging, entertainment) at the donor's residence or personal premises; and (6) anything received by the filer's spouse or dependent children totally independent of their relationship to the filer. Additional exceptions apply.

Privacy Act Statement

Title I of the Ethics in Government Act of 1978, as amended (the Act), 5 U.S.C. app. § 101 et seq., as amended by the Stop Trading on Congressional Knowledge Act of 2012 (Pub. L. 112-105) (STOCK Act), and 5 C.F.R. Part 2634 of the U. S. Office of Government Ethics regulations require the reporting of this information. The primary use of the information on this report is for review by Government officials to determine compliance with applicable Federal laws and regulations. This report may also be disclosed upon request to any requesting person in accordance with sections 105 and 402(b)(1) of the Act or as otherwise authorized by law. You may inspect applications for public access of your own form upon request. Additional disclosures of the information on this report may be made: (1) to any requesting person, subject to the limitation contained in section 208(d)(1) of title 18, any determination granting an exemption pursuant to sections 208(b)(1) and 208(b)(3) of title 18; (2) to a Federal, State, or local law enforcement agency if the disclosing agency becomes aware of violations or potential violations of law or regulation; (3) to another Federal agency, court or party in a court or Federal administrative proceeding when the Government is a party or in order to comply with a judge-issued subpoena; (4) to a source when necessary to obtain information relevant to a conflict of interest investigation or determination; (5) to the National Archives and Records Administration or the General Services Administration in records management inspections; (6) to the Office of Management and Budget during legislative coordination on private relief legislation; (7) to the Department of Justice or in certain legal proceedings when the disclosing agency, an employee of the disclosing agency, or the United States is a party to litigation or has an interest in the litigation and the use of such records is deemed relevant and necessary to the litigation; (8) to reviewing officials in a new office, department or agency when an employee transfers or is detailed from one covered position to another; (9) to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record; (10) to contractors and other non-Government employees working on a contract, service or assignment for the Federal Government when necessary to accomplish a function related to an OGE Government-wide system of records; and (11) on the OGE Website and to any person, department or agency, any written ethics agreement filed with OGE by an individual nominated by the President to a position requiring Senate confirmation. See also the OGE/GOVT-1 executive branch-wide Privacy Act system of records.

Public Burden Information

This collection of information is estimated to take an average of three hours per response, including time for reviewing the instructions, gathering the data needed, and completing the form. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Program Counsel, U.S. Office of Government Ethics (OGE), Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917.

Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number, 3209-0001, is displayed here and at the top of the first page of this OGE Form 278e).

EXHIBIT B

United States Senate
WASHINGTON, DC 20510

November 6, 2017

The Honorable William Emanuel
Member
National Labor Relations Board
1015 Half Street S.E.
Washington, D.C. 20570-0001

Dear Member Emanuel:

We write today to clarify your ethics obligations as a newly confirmed member of the National Labor Relations Board (NLRB). As you know, this position carries enormous importance for workers and the strength of the American economy. Millions of working Americans, whether or not they belong to unions, are now looking to you and your fellow board members to aggressively protect their right to join together to seek higher pay, better working conditions, and a brighter future for themselves and their families.

One element of serving as an NLRB member in a manner that is faithful to the law and to the American public is ensuring that you are not faced with any conflicts of interest, such as conflicts with any parties that come before the Board with whom you previously had a relationship. We are concerned about your long history of representing employers wishing to make it harder for workers to bargain collectively. Your record presents a number of conflicts, particularly with regard to the many clients of your former law firm, Littler Mendelson.

The ethics pledge that you signed pursuant to Executive Order 13770 prohibits you from participating in "any particular matter involving specific parties that is directly and substantially related to [your] former employer or former clients, including regulations and contracts."[1] That Order specifies that "former clients" include anyone for whom you served as an attorney or consultant "within the 2 years prior to the date" of your appointment.[2] "Directly and substantially related to [your] former employer" is defined as "matters in which the appointee's former employer or a former client is a party or represents a party." Thus, in order to adhere to these commitments, you will need to recuse from any matter in which your former employer, Littler Mendelson, is representing a party. In addition, under federal regulations, you are required to "endeavor to avoid any actions creating that appearance that [you] are violating the law..." or

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[1] Exec. Order No. 13770, 3 C.F.R. 9333 (2017). Online at: https://www.oge.gov/web/oge.nsf/aExecutive%20Orders/A43C4DBAB9EC4DC7852580BC006FBA83/$FILE/Exec%20Order%2013770.pdf.

[2] *Id.*

failing to "act impartially and not give preferential treatment to any private organization or individual."[3] Your involvement in any form in a case involving a client of your former law firm would clearly create, at minimum, the appearance of the kind of conflict of interest that this regulation prohibits.

During your July 13, 2017 confirmation hearing, you said that if you were confirmed, you would be "an excellent board member and an honest Board member and an objective one," and said: "[A]s I understand the recusal rule, I have to recuse myself from all cases involving my law firm."[4] But in questions for the record following your confirmation hearing asking you to specify which parties that might come before the board may require your recusal, you simply said, "I have provided the financial information required by law. Please see my 278 filing."

The financial information you've provided, however, does not give a full picture of your potential conflicts. Section 4 of the Office of Government Ethics Form 278e, or "Public Financial Disclosure Report," that you submitted during your confirmation process lists 49 companies as "Filer's Sources of Compensation Exceeding $5,000 in a Year," including major employers like JPMorgan Chase Bank, Nissan North America, PPG Industries, Securitas Security Services USA, Rite Aid Corporation, and Uber Technologies.[5] Staff have identified dozens of pending cases before the NLRB that each involve one of these 49 companies, listed in the attachment to this letter, and more will presumably arise during your tenure on the Board that will require your recusal. But when it comes to determining which parties would require your recusal based on ethics regulations and the commitments you have made to the Senate, this list is incomplete, because it only includes sources of more than $5,000 in compensation for "personal services" for the current and the past two calendar years.[6] For the purposes of fully understanding your recusal obligations, it is missing clients from which you did not receive compensation, clients that compensated you with less than $5,000, and, most notably, clients of your law firm, Littler Mendelson, for which you did not provide personal services.

In order for the public to evaluate your ability to impartially apply the law, you will need to publicly disclose all potential conflicts created by your former clients and those of your firm. To help us understand the full extent of the conflicts of interest your record poses and the cases you will need to recuse yourself from, we respectfully request that you answer the following requests by November 24, 2017.

1. Please list all "former clients" including anyone for whom you served as an attorney or consultant "within the 2 years prior to the date" of your appointment to the NLRB pursuant to Executive Order 13770.

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[3] Basic obligation of public service. 5 CFR 2635.101. Online at: https://www.gpo.gov/fdsys/pkg/CFR-2005-title5-vol3/pdf/CFR-2005-title5-vol3-sec2635-101.pdf.

[4] "Senator Warren Questions NLRB Nominee William Emanuel" [video]. Senator Elizabeth Warren. *Youtube* (July 17, 2017). Online at: https://www.youtube.com/watch?v=1fxyRKrJX6Q.

[5] Emanuel, W. J. "Public Financial Disclosure Report (OGE Form 278e)." *U.S. Office of Government Ethics* (May 2, 2017).

[6] "Your Sources of Compensation Exceeding $5,000 in a Year (Nominee and New Entrant Reports Only)." Public Financial Disclosure Guide. *U.S. Office of Government Ethics* (accessed Nov. 3, 2017). Online at: https://www.oge.gov/Web/278eGuide.nsf/Chapters/Your%20Sources%20of%20Compensation%20Exceeding%20$5,000%20in%20a%20Year%20(Nominee%20and%20New%20Entrant%20Reports%20Only)?opendocument.

2. Please list all cases in which Littler Mendelson represents or has represented a party (a) before the Board or its General Counsel (including all regional offices) or (b) in any courts in a proceeding in which the Board is or was also a party.

3. Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.

4. Please confirm that you will recuse yourself from cases involving each of the companies listed in the attachment to this letter.

Thank you for your attention to this matter. We hope the answers to these questions will be a first step toward ensuring the public that you will be faithful to the law.

Sincerely,

Elizabeth Warren
United States Senator

Patty Murray
United States Senator

Sherrod Brown
United States Senator

Al Franken
United States Senator

Chris Murphy
United States Senator

Richard Blumenthal
United States Senator

Cory A. Booker
United States Senator

Kirsten Gillibrand
United States Senator

Bernard Sanders
United States Senator

Sheldon Whitehouse
United States Senator

Mazie K. Hirono
United States Senator

Richard J. Durbin
United States Senator

Attachment: Open NLRB Cases in Which a Party is "Source of Compensation Exceeding $5,000 in a Year," According to Member Emanuel's *Public Financial Disclosure Report* (OGE Form 278e)[1]

Former Client	Case Number
CBRE, Inc.	01-RC-205981
	21-CA-182368
EMCOR Group, Inc.	20-CA-206203
	20-RC-205892
Enterprise Products Company	16-CA-206932
FedEx Freight, Inc.	32-CA-166913
	32-CA-176171
	32-CA-196037
	32-CA-166909
	32-CA-164946
	32-CA-164936
Genesis Healthcare	06-CB-208790
	04-CA-198944
Handy Technologies, Inc.	01-CA-158125
	01-CA-158144
Mastec, Inc.	16-CA-086102
	12-CA-153478
	31-CA-205653
	01-CA-161183
	12-CA-154795
	01-CA-168468
	15-CA-204600
	12-CA-024979
	12-CA-062983
Nissan North America, Inc.	10-CA-198732
	15-CA-150431
	15-CA-171184
	15-CA-175295
	15-CA-194155
	15-CA-145043
	15-CA-197194
	15-CA-203808
	15-CA-203802
	15-CA-203818
	15-CA-195326
	15-CA-203813
	15-CA-190791
	15-CA-203796

[1] Emanuel, W. J. "Public Financial Disclosure Report (OGE Form 278e)." *U.S. Office of Government Ethics* (May 2, 2017).

	15-CA-201390
	15-CA-203806
Rite Aid	31-RD-001591
	07-CA-206549
	31-CA-203737
	31-CA-207383
	31-CA-205905
	31-CA-200038
	31-CA-200040
	31-CA-205485
	31-CA-206226
	31-CA-200912
	31-CA-205908
	31-CB-207931
	31-CA-187065
	02-CA-160384
	02-CA-189661
	02-CA-182713
Rural/Metro Corporation	19-RC-189869
	28-CA-165387
	12-CA-189787
	28-CA-164048
	32-CA-204800
	28-CA-208936
	28-CA-206365
	28-CA-200674
Safeway	19-CA-189221
	27-RC-206225
	05-CA-209090
	27-CA-207934
	32-CA-204008
	20-CB-206871
	27-CA-203383
	05-CB-206962
	19-CA-182503
	20-CB-203758
	32-CA-206839
	19-CB-009660
	19-CB-192630
	32-CA-207667
	19-CA-208745
	19-CB-178098
	19-CB-168283
	32-CB-207460
	05-CB-207752

	20-CB-201594
Securitas Security Services	16-CA-176006
	16-CA-183494
	31-CA-088082
	31-CA-072180
	31-CA-088081
	31-CA-072179
	19-AC-206531
	19-CA-191814
Serta Simmons Bedding	10-CA-202722
	27-CA-202059
Uber Technologies, Inc.	20-CA-160717
	20-CA-181146
	13-CA-174693
	29-CA-177483
	22-CA-178936
	19-CA-199000
	12-CA-173125
	20-CA-160720
	14-CA-158833
	13-CA-163062
	12-CA-181961
	19-CA-205263

EXHIBIT C

Verizon Communications Inc - Representation Analytics

	Firm	Filling Date	Case Name	Court	Case Type
1	Littler Mendelson PC	12/07/16	Caldwell v. Cellco Partnership	U.S. District Court for the Northern District of Georgia (11th Cir.)	Employment
2	Littler Mendelson PC	08/27/13	Vandergrift v. AOL et al	U.S. District Court for the District of Minnesota (8th Cir.)	ADA - Empl.
3	Littler Mendelson PC	04/04/13	Fields et al v. Cellco Partnership	U.S. District Court for the District of Minnesota (8th Cir.)	FLSA
4	Littler Mendelson PC	03/20/13	Penk v. Cellco Partnership	U.S. District Court for the District of Minnesota (8th Cir.)	FLSA
5	Littler Mendelson PC	03/14/13	Wawrzaszek et al v. Cellco Partnership	U.S. District Court for the District of Minnesota (8th Cir.)	FLSA

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On January 10, 2018, I served the following documents in the manner described below:

MOTION TO INTERVENE OF THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO/MOTION FOR RECONSIDERATION

☑ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kkempler@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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Attorney for the National Labor Relations Board

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 10, 2018, at Alameda, California.

/s/ Karen Kempler
Karen Kempler

CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I hereby certify that on February 14, 2018, I electronically filed the foregoing **OPPOSITION TO MOTION TO EXTEND TIME FOR FILING RESPONDENT'S OPENING BRIEF** with the United States Court of Appeals, Ninth Circuit, by using the Court's CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Notice of Electronic Filing by the Court's CM/ECF system.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on February 14, 2018.

/s/ Karen Kempler
Karen Kempler

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On February 15, 2018, I served the following documents in the manner described below:

MOTION TO CORRECT OR REJECT POSITION OF GENERAL COUNSEL

☒ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kkempler@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 15, 2018, at Alameda, California.

/s/ Karen Kempler
Karen Kempler